(1)

Supreme Court, U.S.
FILED

981587 MAR 31 1999

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

HENDRICK W. HAYNES - petitioner

v.

UNITED STATES OF AMERICA - respondent

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

RESPONDENT:
Solicitor General of the U. S. A.
Room 5614, Department of Justice
950 Pennsylvania Ave. N.W.
Washington, D.C. 20530-001
ATTENTION: Seth P. Waxman
Solicitor General
Counsel of Record

PETITIONER:
Hendrick W. Haynes (Pro Se)
17427 - 195th Plc. SE
Renton, Washington U.S.A.
98058
(425) 432 - 3071

20 March 1999

38pp

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Whether 35 U.S.C. sections 154 and 183 "SECRECY ORDER" (S.O.) law provides equal Constitution of the United States protections to Authors and Inventors (Article 1, Clause 8, Section 8 ("Power... To promote...Progress...")) for sacrificial days labor lien; e.g., may an inventor be excluded (e.g., must share Right) from exclusive right and liberty to make and use and vend to others (to recover research and development costs) without first being paid (with patent costs)?

2. Can the United States deny an inventor the further compensated and paid opportunity to promote and develop their invention for the United States Government (35 U.S.C. 181-188, etc.)?

3. Must the United States provide inventor legal advise and the resources needed to comply with restrictions and material needs?

L I S T O F P A R T I E S

All parties appear in the caption of the case on the cover page.

United States of America has been represented in the past (S.Ct. case #97-8805) by and, absent further information by respondent, as:

RESPONDENT:

Solicitor General of
the United States
Room 5614, Department
of Justice
950 Pennsylvania Ave. N.W.
Washington, D.C. 20530-001

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10 U.S.C. 5022; .... Pg. 25.

10 U.S.C. 7521; .... Pg. 5, 26, 29.

10 U.S.C. 7522; .... Pg. 26, E-1

10 U.S.C. 7523; .... Pg. 26.

15 U.S.C. 1021-1024; .... Pg. 19.

17 U.S.C. 102-104; .... Pg. 16.

17 U.S.C. 102; .... Pg. E-49.

17 U.S.C. 103; .... Pg. E-48.

17 U.S.C. 104; .... Pg. E-47.

17 U.S.C. 106; .... Pg. 18.

17 U.S.C. 302(a); .... Pg. 18.

18 U.S.C. 793-794; .... Pg. 16, E-2.

28 U.S.C. 1498; .... Pg. B-14, B-19, B-21.

35 U.S.C. 103; .... Pg. 18.

35 U.S.C. 154; .... Pg. 2, 6, 7, E-44.

35 U.S.C. 183; .... Pg. 1, 4, 7, 19, A-9, A-11, A-15, A-34, A-47, A-48, B-7, B-14, B-18, E-38.

35 U.S.C. 183 "SECRECY ORDER with PERMIT "A"; .... Pg. 29.

35 U.S.C. 187; .... Pg. 17, E-2

35 U.S.C. 181-188; .... Pg. 4, 19, A-8, A-34, E-11.

50 U.S.C. 401; .... Pg. 19.

50 U.S.C. 404(b); .... Pg. 19.

ACTS BY CONGRESS

"ACT, James Rumsey", c. 1785;
Pg. E-18, E-19, E-21, E-22, E-23

"EMPLOYMENT ACT OF 1946", as amended,
15 U.S.C. 1021-1024;
Pg. E-15, E-16, E-25.
"EXPORT ADMINISTRATION ACT of 1979,
as amended"; in EXHIBIT Vol. 3;
Pg. 9/44, 13/44, 8/43, 39/43;
Pg. 4.

"FAIR LABOR STANDARDS ACT" (FLSA)
of 1938, as amended, 29 U.S.C.
para. 201 et seq. (1982);
Pg. E-24.

"INTERNATIONAL EMERGENCY ECONOMIC
POWERS ACT, as amended";
EXHIBIT in Vol. 3; Pg. 8/43.

"PATENT DISCLOSURE HEARINGS before
Subcommittee No. 3 COMMITTEE ON
THE JUDICIARY House of
Representatives Eighty-Second
Congress First Session on H.R.
4687" (August 21, 1951; Serial
No. 22 Printed for the use of the
committee on the Judiciary);
in EXHIBIT Vol. 1 Sec. 15; also
Pg. 7/44, 12/43, 16/43; Pg. 23.

SPECIAL RECORDS OF CONGRESS

JCDV, May Term, 1784; EXHIBIT Vol. "i" at Pg. 19/43.
SBIR topic N86-49; EXHIBIT Vol. "i" at Pgs. 19/44, 22/44.

CONSTITUTION OF THE UNITED STATES in Volume 1 Section 14 (Farrand 1913)

Art. 1, Sec. 8, Cl. 8; Pg. 3, 6, 18.

SPECIAL REFERENCES TO UNITED STATES PATENTS (inventors)

Haynes, H. #4,979,917;
.....Pg. 29, et seq.

Rumsey, James; somewhere First Few.
.....EXHIBIT Vol. "i" pg. 19/43, Pg. 7, E-18, E-19, E-21, E-22, E-23.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

HENDRICK W. HAYNES - petitioner

v.

UNITED STATES OF AMERICA - respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Petitioner, Hendrick W. Haynes, respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Federal Circuit in this case.

O P I N I O N S B E L O W

Having failed at this time to identify published opinions below, Court opinions are contained in appendix "A"; and Administrative Opinions in appendix "B". Court of

Appeals for the Federal Circuit rehearing denial is at App., infra, A-3, and Opinion is at App., infra, A-7.

A D V I S E M E N T

The respondent has not been advised of CONSTITUTIONAL issues at this time, other than receiving the petition herein.

J U R I S D I C T I O N

Decision which denied petitioners request for rehearing was filed by the UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT on 4 January 1999 (see App., infra, A-3).

Jurisdiction is invoked under 28 U.S.C. § 1254(1).

S T A T U T O R Y P R O V I S I O N S I N V O L V E D

Title 35 U.S.C. § 183, which provides for "Right to compensation" for "the damage caused by the order of secrecy" (App., infra, D-96) and Title 35 U.S.C. §

154, which provides inventor only with the right "to exclude others", e.g., it excludes inventor from right to produce.

CONSTITUTIONAL PROVISION INVOLVED

Article 1, Section 8, Clause 8, which provides for "... Congress shall have Power *** To promote the Progress of Science and the useful Arts *** for *** Authors and Inventors *** by securing *** the exclusive Right to their respective Writings and Discoveries;", e.g., equal Right to recover development costs by producing, for himself and others, his writings and inventions (products).

STATEMENT

Petitioners work, which involved an evolving form of marine water jet propulsion, out of which grew a sequence of patents (cf. EXHIBIT Vol. "i", pg. 17/43 et seq.), wherein the old was incorporated in the new, more profitable and saleable units (App., infra, A-46,

A-47). A SECRECY ORDER was issued against petitioner, stopping invention promotion and development, and by triggered laws (37 CFR § 5.21) made petitioners commercial future "speculative, at best" (App., infra, A-11, "agency" D-94). Claims for damages under 35 U.S.C. § 183 have been filed Administratively, and with the Courts, and DENIED as "SPECULATIVE". A "BILL" for past labor is provided as hereinafter explained, by time period, as may be lawful, as asked by the Court (App, infra, A-8, "... show monetary damages ...").

BASIC QUESTION

Can becoming an Author and/or Inventor vest citizens with special labor "privileges and immunities" in "trade and commerce,"? (cf. THE FEDERALIST, at EXHIBIT Vol. 1 sec. 12, pg. 307); Justice Department has predicted petitioners future in commerce is "speculative at best". Are they entitled to labor value? (App., infra, A-11; cf. 35 U.S.C. §§ 181-188 "agency", App., infra, D-94; cf. "national emergency" discussed in EXHIBIT Vol. "i", pg. 4/44, relating to trade controls (admitted exhibit 460 "U.S. EXPORT

REGULATIONS" 15 CFR §§ 730-774, published August 1996)). All claims based on a future ability to sell freely and recover investment have been DENIED (App., infra, B-14, B-7, B-1, and EXHIBIT Vol. 6 at 1 through 8 inclusive, and Vol. 5 sec. Front).

A B I L L for past services is herein enclosed based on past work to develop the invention, as well as discover how to collect his bill, at $50.00/hr., based on a 2,000 hours available per year work rate (or fraction thereof). This appears consistent with COVER SHEET of COMPLAINT (App., infra, A-54) and claim submitted to the Court of Appeals for the Federal Circuit (EXHIBIT Vol. "i", pp. 16/43, 38/43), this being consistent with U. S. Navy contract law (taking a progress payment labor "lien" on work completed) under Title 10 § 7521 (App., infra, D-73).

Petitioner is a Life M e m b e r of the Society of Naval Architects and Marine Engineers, and, as the Court has ruled, a satisfactory designer and maker of patented marine waterjet propulsion equipment. Shop rate ($50.00/hr.) is common repair man hour shop rate.

Shipbuilder contractor would likely charge a higher rate to design and build custom propulsion equipment.

CONSTITUTION AND RELATED LAWS:

RESPECTFULLY OFFERED IS
CONSTITUTION STRUCTURE QUESTION

Constitution of the United States, Article 1, Section 8, Clause 8, which contains words "Times" (current common publishing) or "Time" (cf. EXHIBIT Vol. "i", pg. 6/44 at FN3), and interpretation of words "their respective". In structural combination, Inventors Right may be divided from Authors Right, and "Congress shall have Power ... To promote ... Inventors ... exclusive Right to ... Writings and Discoveries;" in a way different from Authors. However, inventors may be first authors, then become something more .... they physically convert their written ideas into a functional and useful something, which they may mass produce, and also create therefrom derivative works.

PATENT

Title 35 U.S.C. section §

154 limits inventors Right to only the power "... to exclude others..", which is absent language allowing an inventors "to do" (see below). Title 35 U.S.C. § 183, which provides for damage compensation caused by a SECRECY ORDER (App., infra, D-96), would therefor not see inventor "to do" Right, e.g., under 35 U.S.C. § 154, leaving the inventor to speculate only on a future not granted by the Sovereign).

PATENT AS SOVEREIGN INSURANCE

Can Congress take away a patentees "to do" right and interfere with liberty, e.g., the commercialization of patentees patent and products therefrom?

In a letter between James Madison, Jr. and Thomas Jefferson (Richmond, Jan. 9, 1985), an ACT is described, argued for by General George Washington, which grants patentee James Rumsey an AWARD GUARANTEE of £ 10,000 (c. 1785; or about 10 to 12 years Governor salary) if the Government should interfere with his Rights during the term (App., infra, E-18, Jan. 9, 1785; cf. "salaries" Madison to

Jefferson, Richmond, Jan. 22, 1786, App., infra, E-20).

These fears of Government Interference are voiced "In CONGRESS, July 4, 1776 [with] A DECLARATION By the REPRESENTATIVES of the UNITED STATES OF AMERICA, In GENERAL CONGRESS assembled." and has remained a general part of the political experience:

> (letter from Thomas Jefferson) "I invited them to dine with me, and after dinner, sitting at our wine, having settled our question, other conversation came on, in which a collision of opinion arose between Mr. Adams and Colonel Hamilton, on the merits of the British constitution, Mr. Adams giving it as his opinion, that, if some of its defects and abuses were corrected, it would be the most perfect constitution of government ever devised by man. Hamilton, on the contrary, asserted, that with its existing vices, it was the most perfect model of government that could be formed; and that the correction of its vices would render it an impracticable government. And this you may be

assured was the real line of difference between the political principles of these two men. Another incident took place on the same occasion, which will further delineate Mr. Hamilton's political principles. The room being hung around with a collection of the portraits of remarkable men, among them were those of Bacon, Newton and Locke, Hamilton asked me who they were. I told him they were my trinity of the three greatest men the world had ever produced, naming them. He paused for some time: "the greatest man," said he, "that ever lived, was Julius Caesar." Mr. Adams was honest as a politician, as well as a man; Hamilton honest as a man, but, as a politician, believing in the necessity of either force or corruption to govern men." ("Old Acquaintance" letter to Doctor Benjamin Rush. Monticello, January 16, 1811. JEFFERSON'S LETTERS, arranged by Willson Whitman (E.M. Hale and Company, Eau Claire, Wisc. 1950); pg. 268)

In 1790, Congress created two laws, one for Patents, and another for Copyrights, the key being that both offered protection for

fourteen years. A copyright applied to the "sole right and liberty of printing, reprinting, publishing, and vending" a "map, chart, book or books," and was renewable for an extra 14 years. (source: A HISTORY OF AMERICAN LAW by Lawrence M. Friedman, Second Edition (c. 1973, 1985; Simon and Shuster, Touchstone, NY, pg. 254) ISBN 0-671-52807-6).

Thomas Jefferson, on the success of the new patent law, and general political nature of America at that time, wrote as follows:

> "In the line of science we have little new here. Our citizens almost all follow some industrious occupation, and, therefore, have little time to devote to abstract science. In the arts, and especially in the mechanical arts, many ingenious improvements are made in consequence of the patent-right giving exclusive use of them for fourteen years. But the great mass of our people are agricultural; and the commercial cities, though, by the command of newspapers, they make a great deal of noise, have little effect in the direction of government. They are as different in

sentiment and character from the country people as any two distinct nations, and are clamorous against the order of things established by the agricultural interest. Under this order, our citizens generally are enjoying a very great degree of liberty and security in the most temperate manner. Every man being at his ease, feels an interest in the preservation of order, and comes forth to preserve it at the first call of the magistrate. We are endeavoring, too, to reduce the government to the practice of a rigorous economy, to avoid burdening the people, and arming the magistrate with a patronage of money, which might be used to corrupt and undermine the principles of our government. I state these general outlines to you, because I believe you take some interest in our fortune, and because our newspapers, for the most part, present only the caricatures of disaffected minds. Indeed, the abuses of the freedom of the press here have been carried to a length never before known or borne by any civilized nation. But it is so difficult to draw a clear line of

> separation between the abuse and the wholesome use of the press, that as yet we have found it better to trust the public judgement, rather than the magistrate, with the discrimination between truth and falsehood. And hitherto the public judgement has performed that office with wonderful correctness." ("On Public Judgement" to Mr. Pictet. Washington, February 5, 1803. JEFFERSON'S LETTERS, arranged by Willson Whitman (E.M. Hale and Company, Eau Claire, Wisc. 1950); pg. 212)

The general political nature of America was soon to change.

Following the great Civil War (Armies fought between 1861-1865), the U. S. Patent Office was changed (1872) to:

> "secure a more efficient performance of the duties of the Patent Office than under present legislation." ("Message from the President of the United States", U. S. Grant, Executive Mansion, March 15, 1872)

such that

> "granting patents .... will be simplified, and much litigation avoided." (C. Delano, Secretary, Department Of The Interior, Washington, D.C., March 1, 1972).

In The Report of the Commissioner of Patents, M. D. Leggett (Gen.), stated:

> "[P]atent laws offer a premium to inventors in the form of the right to the exclusive use of their inventions for a limited period of time.... laws should be so framed and executed as to furnish the maximum stimulus to inventors, and put the minimum of restraint upon the manufacturing interests of the country."

and

> "The theory of the American system is to grant only valid patents, and at a cost so small as to make them obtainable by inventors of very small income."

noting

> "Many inventions, which at first appear very trivial, turn out to

be of great value, and others, which at first excite hopes of great value, prove, upon trial, to be utterly worthless."

(Grant, Delano, and Leggett quotes in petitioners EXHIBIT Vol. 1, sec. 8, "OFFICIAL GAZETTE OF THE UNITED STATES PATENT OFFICE, Tuesday, March 19, 1872", pp. 247-252, at pp. 247, 248 (2nd para.)).

Recently, the Supreme Court of the United States, in WAYNE K. PFAFF v. WELLS ELECTRONICS, INC., No. 97-1130, decided November 10, 1998, (67 U.S.L.W. 4009, 4011), as hereinafter discussed, affirming the traditional standard that an inventor must have his exclusive Liberty for 17 years, to sell into the stream of commerce unchallenged, to recoup his losses, after which he would enjoy the shared competition of others:

"Letters patent are ... for the purpose of ... the exclusive right and liberty to make and use and vend to others to be used their own inventions, as tending to promote the progress of science and the useful arts,

> and as a matter of compensation to the inventors for their labor, toil, and expense in making the inventions, and reducing the same to practice for the public benefit, as contemplated by the Constitution and sanctioned by the laws of Congress." SEYMOUR V. OSBORNE (11 Wall. 516, 533-534.

While patent law was growing more restrictive and difficult (cf., EXHIBIT, Vol. 1 sections 9, 10, 11, 12, and 13). C O P Y R I G H T LAW seems to be more liberal (Ibid., Vol. "i", pgs. 2/44-7/44).

U. S. C O P Y R I G H T law, under the Act of Congress of March 3, 1909, the exclusive privilege was extended to cover such things as:

> "books of all kinds, including title pages; newspapers and periodicals; maps; addresses, lectures, sermons; photographs, prints, and pictorial illustrations; musical and dramatic compositions; works of art and reproductions of same; models and designs, and plastic works and drawings used for technical or scientific purpose." (THE NEW WORLD FAMILY ENCYCLOPEDIA, Volume 4, William

H. Henderson, Editor-in-Chief
(c. 1955, Standard International
Library, In. NY; pg. 1143)

More current C O P Y R I G H T protections are cited in Appendix, infra, E-47 et seq., reciting Title 17 U.S.C. §§ 102 - 104 inclusive (1977) (see "originality" question 1 in EXHIBIT Vol. "i" pg. 2/44).

WHAT HAS CHANGED

Under current PATENT law within 35 U.S.C. § 154 and §§ 181 - 188 and others, an inventor-innovator-manufacturer is placed under maximum restraint and criminal law. They must keep secret, must only work for the United States. And also pay their money (earned elsewhere) for the power to "exclude others". He or she's substance is eaten away (35 C.F.R. § 5.21, App., infra, D-48, effect of Rescinding Order).

Indeed, under Title 18 U.S.C. §§ 793 and 794 (App., infra, D-77 and D-85), and inventor and all they own may be seized by the United States ... their future no longer their own ... if they give the Government even probable cause

to believe the inventor may act outside of their control ("intent or reason to believe"; see also App., infra, C-3; EXHIBIT Vol. 2 sec. 5 exhibit 330), unless they become an officer, agent or employee of the U. S. Government (activities of said officer, agent or employee, in the performance of their duty, may be exempted under, for example, App., infra, D-103 (35 U.S.C. § 187), D-28 (22 CFR § 122.1(b)(1)), D-36 (27 CFR § 47.2(c)), D-42 (27 CFR § 47.53(a)(1)), and D-103 (35 U.S.C. § 187)), however ... he would need to carry proof (requirement such as at App., infra., 22 CFR § 47.53(b)).

CURRENT MANDATE FOR SUBSISTENCE LIVING WHILE DEVELOPING YOUR INVENTION AND SEEKING PATENT

Unless the value of the inventors past work becomes recoverable, the income value of that period of life (with benefits) is lost, and may doom the lifetime income potential (rest of inventors life) to one of poverty (see EXHIBIT Vol. "i" pg. 29/44, invention development criteria mandated by case in re Theis (204 USPQ2d 188,

194 (CCPA 1979))). Thusly, those with Government jobs that pay them to go to school and/or do research (and accumulate retirement benefits) are financially and socially favored.

The military recognizes training and compensates routinely under Title 10 U.S.C. § 1333(2) (App., infra, D-61).

Is Title 35 U.S.C. § 103 (1984), which specifies "conditions patentability [on] non-obvious subject matter [which] ... the subject matter as a whole would [not] have been obvious at the time of the invention ... to someone having ordinary skill in the art to which said subject matter pertains...", recognizable for retroactive Government training and compensation credit?

Confer with Title 17 U.S.C. section 106, as would relate to above (Const. Art. 1, Sec. 8, Cl. 8) and related Title 17 U.S.C. § 302(a):

> "Duration .... endures ... term ... last surviving author and fifty years after authors death."

And, the freedoms artists enjoy.

Thusly, protection under the Law may be superior for Authors than Inventors, especially ones subjected to a SECRECY ORDER.

WORKING INVENTORS:
NEED TO BE RECOGNIZED.

The absence of recovery under Title 35 U.S.C. § 183 may question the need to "...eliminate unnecessary duplication..." (Title 50 U.S.C. § 401; EXHIBIT Vol. "i" pg. 40/43) and "to eliminate duplication;" (Title 10 U.S.C. § 5013(c)(5); App., infra, D-66; Title 35 § § 181 - 188, App., infra, D-91 to D-104 inclusive).

Thusly, a clarification of equal protection under the laws is sought from The Supreme Court of the United States, this being consistent with Title 15 U.S.C. § 1021-1024 " ... promote free competitive enterprise .... for those able, willing, and seeking work ... " (App., infra, E-15)

and

Title 50 U.S.C. § 404(b)(1) FEMA doctrine " ... policies

concerning industrial and civilian mobilization ... to assure the most effective .... utilization of the Nation's manpower in the event of war;" (see EXHIBIT Vol. "i" pg. 41/43).

R E A S O N F O R
G R A N T I N G W R I T

IMPORTANT QUESTION OF PRIVILEGE HAS EMERGED, UNDERMINING PATENT VALUE

The current law, as observed by the Court of Appeals for the Federal Circuit, states:

> "It should hardly need saying that the issuance of a patent gives no right to make, use or sell a patented invention, ... or that the absence of a patent creates no legal prohibition against continued research and development." Animal Legal Defense Fund v. Quigg, 932 F.2d 920, 935, 18 USPQ2d 1677, 1689 (Fed. Cir. 1991)) (enlarged quote at App., infra, E-45)

As patentee has previously suggested, what he thought he paid

for and continues to pay fees on (to the United States Patent Office (PTO)) has been taken away by recent acts of Congress (35 U.S.C § 154 (App., infra, D-90, and E-44), e.g., an ability to secure a labor lien and pay it off against future work in commerce .... for which he pays the U. S. Patent and Trademark Office fees.

In SEYMOUR V. OSBORNE, Supreme Court Patent Law quoted above, we see similarity with MAZER v. STEIN (1952), frequently cited in copyright cases:

> "the exclusive right and liberty to make and use and vend to others to be used their own inventions, as tending to promote the progress of science and the useful arts, and as matter of compensation to the inventors for their labor, toil, and expense in making the inventions, and reducing the same to practice for the public, as contemplated by the Constitution and sanctioned by the laws of Congress." (S.Ct. Dec. 1870, relating to the development of a grain cutting and harvesting machine; SEYMOUR V. OSBORNE,

> 11 Wall. 516, 533-534, quoted in WAYNE K. PFAFF v. WELLS ELECTRONICS, INC. , No. 97-1130, decided November 10, 1998, (67 U.S.L.W. 4009, 4011)

and,

> "Sacrificial days devoted to such activities deserve rewards commensurate with the services rendered." Mazer v. Stein , 347 U.S. 201, 219, also 100 USPQ 325, 333 (1954). (cf. App., infra, E-40 at FN9).

"Sacrificial days" (past development costs) seem recoverable to Authors. Can this be so too for Inventors? Mazer v. Stein (Ibid.) was used to present DEMAND to the Court of Appeals for the Federal Circuit (APPENDIX "i", pg. 31/43 - 39/43, for $ 2,300,000 plus "retirement") and seems to have been overlooked (see also App., infra, E-35, which calculates that this amounts to about 12 times what petitioner has been living on) for comparison ... petitioners offers to serve was never answered (App., infra, C-45, C-42, C-37).

Petitioners case rises under Title 35 United States Code

section 183, "Right to compensation" (App., infra, D-96; "Hearings .... Committee on the Judiciary ... H.R. 4687 ... August 21, 1951" in EXHIBIT Vol. 1 sec. 15, abstracted comments from "Hearings ..." Ibid. Vol. "i" pg. 13/43), which provides for:

> "compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Government".

United States Court of Appeals for the Federal Circuit affirmed District Court ruling that section 183:

> "authorizes only monetary damages and gives no authority for awarding non-monetary relief." (App., infra, A-11).

And did not comment on District Court findings (although repeatedly cited and contained in appendixes) that:

> "Plaintiff claims, and the United States does not dispute, that during the time the Secrecy Order was in effect, he was effectively prohibited from selling his inventions. This

> limitation extended not only to the modified version covered by the pending patent application, but also to the earlier versions, because the earlier versions were incorporated in the new one." (App., infra, A-47).

Thusly, petitioners earlier research work, with patents, was cumulative into improved versions resulting in a "SECRECY ORDER" (App., infra, A-52) and "PERMIT A" (App., infra, A-57) (for sales from origin of 1975, see EXHIBIT Volume 5 sec. front, Chart 2; also Ibid. Vol. 6, claims in parts 1-7); EXHIBIT Volume "i" at page 17/43 contains product "History" (also in S.Ct. #97-8805 Rule 33.1 book at A-46), and Vol. 10 VIDEO, as well as Vol. 6 sec. Front and Vol. 7 sec. Front), which triggered manufacturing and service restraints under 22 CFR § 120.10(a)(3) and other laws (App., infra, D-21; etc.).

It should be noted that no funding (App., infra, C-1) or technical support (App., infra, C-7 to C-57 inclusive, and B-23, B-18) has ever been provided Wolfpak Marine Corp. (and sole stock holder petitioner; App., infra, B-38) although a program may be authorized

under laws such as 10 U.S.C. § 5013(c)(5) (App., infra, D-66)(at U.S. Navy discretion and funding by Congress).

U. S. NAVY HAS HISTORICALLY SHOWN PROGRAM LEADERSHIP WHEN SUPPORTED BY CONGRESS

> (Secretary of the Navy, 10 U.S.C. § 5013(c)(5) (App., infra, D-63 at D-66) provides:) "effective cooperation and coordination ... effective, efficient, and economical administration and to eliminate duplication;"

Further, 10 U.S.C. § 5022 (App., infra, D-68) charges the Office of Naval Research with the specific responsibility of

> (O.N.R. provides, at 10 U.S.C. § 5022(b)(1) (App., infra, D-68):) "the encouragement, promotion, planning, initiation, and coordination of naval research;"
>
> (O.N.R., Ibid., at (b)(3)) " ... activities ... relating to patents, inventions .... and matters connected therewith."

which is limited by:

> (O.N.R., Ibid., at (c))
> "Sufficient information relative to estimates of appropriations for research by the several bureaus and offices shall be furnished to the Office of Naval Research to assist it in coordinating naval research and carrying out its other duties."

As stated above, contracts for research may be given under Title 10 U.S.C. §§ 7521, 7522, and 7523, which provides for United States Navy PROCUREMENT OF SUPPLIES AND SERVICES through progress payments (other branches of the Government may have similar law provisions, and be affected).

Temporary and program specific Officer commissions may be given by the military (such as by Title 10 Chapter 35; App., infra, D-57; with retirement benefits under Chapter 67, App., infra, D-60).

Pursuant to the Court of Appeals of the Federal Circuit Haynes v. U.S. opinion No. 98-1458 (App., infra, A-8), which stated "Because Mr. Haynes did not show monetary

damages ... ", a new, more easily seen shop labor BILL herein follows, for research services rendered in making his patented discovery and sequential labor in processing same (common repair labor rate):

INVENTORS SHOULD, AT LEAST, BE PAID FOR WORK COMPLETED

B I L L
(D E M A N D)

I) PRE-SECRECY ORDER PERIOD OF R E S E A R C H

2,000 hrs./yr. X 13 yrs.= 26,000 hrs.
(1975-1987 years inclusive)

26,000 hrs. X shop rate (@ $50.00/hr.)= $ 1,300,000.00

II) SECRECY ORDER PERIOD:

DUE 1988 - 2/90 = 26 months. (167 hrs./mo. X shop rate (@ $50.00/hr.)= $8,350/mo. ("shop rate"/mo.); $8,350/mo. X 26 mo.= $217,100.00)

III) POST SECRECY ORDER PERIOD:

DUE 2/90 - 3/99 = 121 months
($8,350/mo. "shop rate"
X 121 mo. =
$1,010,350.00)

A) BILL at shop rate to USN:

I) $1,300,300.00 (@ shop rate)
II) $ 217,100.00 (@ shop rate)
III) $1,010,350.00 (@ shop rate)
==========
$2,527,450.00

B) Other:

Patent File Wrappers
(estimated): $3,500

Patent Fees (reserve right to
bill for this later)

All previous research on "earlier versions were incorporated in the new one" (see App., infra, A-47; also EXHIBIT Vol. 9 sec. 15 (note patent references) and Vol. 6 sec. V);

T O T A L: $2,530,950.00
(A + B)

C U R R E N T A M O U N T

D U E N O W : $2,530,950.00
(or some portion or multiple thereof, as may be lawful and rightful (confer App., infra, A-54), as may be decided by the Court)

Original research for the Government under Permit "A" (Secrecy Order PERMIT "A", App., infra, C-57), and U.S. Patent number 4,979,917, as submitted to the Department of Justice and United States Navy and as admitted into a Court of Law (useable for purposes of 10 U.S.C. § 7521, App., infra, D-73).

C O N C L U S I O N

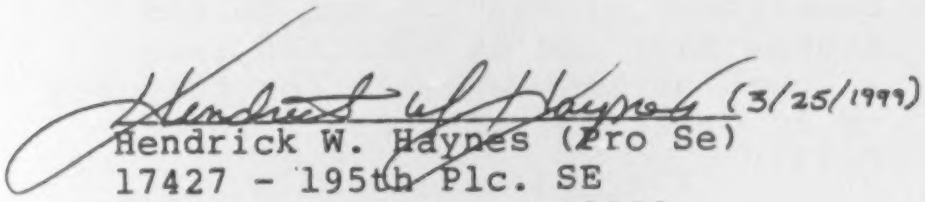
Accordingly, both in the language of the Constitution (Const., Art. 1, Sec. 8, Cl. 8), construed in light of the law existing when it was passed (see EXHIBIT Vol. 1 sec. 12; also Vol. "i", pg. 2/44, FN1), and the legislative history (Ibid., sec. 8), a contradiction may be seen in the court of appeal's decision. This Court should grant inventor Haynes' petition to resolve the

identified conflict in the patent laws and supply guidance for the lower Courts and Administrators.

It is respectfully suggested Certiorari should be GRANTED.

Respectfully submitted,

Petitioner,



(3/25/1999)

Hendrick W. Haynes (Pro Se)
17427 - 195th Plc. SE
Renton, Washington 98058
(425) 432-3071

A P P E N D I X

United States Court of Appeals for the Federal Circuit; Haynes v. US
CA FC#98-1458 . . . A-2 to A-27
Decision and OPINION A-7

Supreme Court of the United States; Haynes v. USA #97-8805 (requesting case be sent back to CA 9th Circuit based on Copyright considerations and equal protection under the law for Authors and Inventors) . . .
S.Ct.#97-8805 . A-18, A-25, A-26

United States Court of Appeals for the Ninth Circuit; Haynes v. USA
CA 9th #97-35991 . . . . . A-27

United States District Court, Western District of Washington (Seattle); Haynes v. USA
DC(WDW) #96-Cv-50 . A-29 to A-54
Judgement A-30
Report and Recommendation . A-44

USN ADMIN. ACTION . . B-1 to B-48
Claim denials . . B-1, B-7, B-14
(NOTE: see booklet S.Ct. #97-8805 pg.s 24, A-86, and CA FC case APPEAL #98-1458, for more calculations.).

SECRECY ORDER LETTERS (Abridged). C
SECRECY ORDER LAWS (Abridged) . . D
SPECIAL REFERENCES (for notes). . E

UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

98-1458

HENDRICK W. HAYNES,
Plaintiff-Appellant,

v.

UNITED STATES,
Defendant-Appellee.

J U D G E M E N T

ON APPEAL from the
U.S. District Court for the
Western District of Washington

in CASE NO(S)
96-CV-50

This CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:
A F F I R M E D

ENTERED BY ORDER OF THE COURT

DATED: NOV 6 1998 /s/
Jan Horbaly, Clerk

ISSUED AS A MANDATE: JANUARY 11,1999
==========

UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

O R D E R

Before RICH, Circuit Judge, RADER, Circuit Judge, and SCHALL, Circuit Judge.

A petition for rehearing having been filed by the APPELLANT,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED.

The mandate of the court will issue on January 11, 1999.

FOR THE COURT
/s/
Jan Horbaly
Clerk

Dated: January 4, 1999

cc: HENDRICK W. HAYNES
F. JEFFERSON HUGHES

F I L E D
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JAN 4 1999

JAN HORBALY
CLERK

HAYNES V US, 98-1458
(DCT - 96-CV-50)

****
* *
* NOTE: Pursuant to Fed. Cir. R. *
* 47.6, this order is not citable *
* as precedent. It is a public *
* record. *
* *
****

N O N P R E C E D E N T I A L

F I L E D
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

DEC 18 1998

JAN HORBALY
CLERK

R E C E I V E D
DEC 18 1998
United States Court of Appeals
For The Federal Circuit

IN THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

HENDRICK W. HAYNES,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No.
	)	98-1458
UNITED STATES,	)	
	)	
Defendant-Appellee.	)	

_M O T I O N_

_to ADD ADDITIONAL APPENDIX MATERIAL

Appellant respectfully moves his attached ADDITIONAL APPENDIX (AA) be added to INFORMAL PETITION FOR REHEARING. Referred to material contains exhibit locations, testimony regarding purchase of devices disclosed in SECRECY ORDER patent (for commercial and private uses), interest of others to work with appellant in commercial relationship with regard to '917 patent, and general need to quiet ships and propulsion in order to protect outside marine life (ecology issue .... not high military use standard); and (with laws), calculations for retirement ENTITLEMENT earned when SECRECY ORDER issued. LOSSES due to not finding another job is also calculated (USN failure to advise).

Respectfully,
17 Dec. 1998

/s/

Hendrick W. Haynes, Pro Se
17427 - 195th Plc. SE
Renton, Washington 98058
(425) 432-3071

D E N I E D
JAN 4 1999

FOR THE COURT
/s/
JAN HORBALY
Clerk

Date

[see appendix E-3]

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

98-1458

HENDRICK W. HAYNES,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

DECIDED: November 6, 1998

Before RICH, RADER, and SCHALL, _Circuit Judges_.

RADER, _Circuit Judge_.

The United States District Court for the Western District of Washington denied relief to Mr. Haynes for harm stemming from the issuance of a Government secrecy order covering his patent application for "stealth" boat bow thruster technology. Because Mr. Haynes did not show monetary damages, this court affirms.

I.

Mr. Haynes owns several patents on marine engineering products. In October 1986, Mr. Haynes applied for a patent on a "marine propulsion device with gaseous boundary layer for a thrust jet flow stream exhibiting stealth and ice lubrication properties." The Patent and Trademark Office (PTO) designated this patent application No. 925,544 (the '544 application). At the request of the U. S. Navy, the PTO issued a secrecy order on December 18, 1987 on the '544 application and its subject matter under 35 U.S.C. §§ 181-188 (1984).

The PTO renewed the secrecy order on December 16, 1988, and again on December 18, 1989, following annual

reviews of the order by the Navy. On February 21, 1990, the PTO rescinded the secrecy order after a Navy reviewer expressed his opinion that "he did not think that this invention would quiet ships very much" because of "counteracting noise problems." Nevertheless, the secrecy order had remained in effect for approximately two years and two months. Following the removal of the secrecy order, Mr. Haynes pursued his patent application and eventually obtained U.S. Patent No. 4,979,917 (the '917 patent).

Under 35 U.S.C. § 183 (1988), which allows patentees to recover damages for imposition of a secrecy order, Mr. Haynes filed an administrative claim with the Navy for compensation. The Navy denied the administrative claim, finding that Mr. Haynes' damage claims were too speculative. Mr. Haynes then commenced this action in the United States District Court for the Western District of Washington.

Mr. Haynes' request for relief in the district court included a request for both monetary damages and non-monetary relief. Although the amount requested appears to have

varied substantially over time, Mr. Haynes sought somewhere around $24,000,000 in damages. Mr. Haynes also sought non-monetary relief including a request that:

> the court treat his business as a "casualty of war;" to require the United States to issue a "thank you" and a medal of commendation or certificate of appreciation to all inventors who have been the subjects of secrecy orders; to require the small business administration to accord preferential treatment; and to require the United States to create an "Office of Innovation Research."

Mr. Haynes also sought "to have the [p]rivilege of using the military facilities at the military facility on Waikiki Beach, Honolulu, Hawaii, which includes a fine hotel, a white sand beach, a park, and guarded parking lot."

The United States moved for summary judgement on both the monetary and the non-monetary claims. The district court granted the Government's motion for summary

judgement with respect to the non-monetary claims, but denied summary judgement on the non-monetary relief claims because 35 U.S.C. § 183 authorizes only monetary damages and gives no authority for awarding non-monetary relief.

The United States' motion for summary judgement on the monetary damage claim alleged that Mr. Haynes' "proof of damages at trial [would] be speculative, at best, and therefore legally insufficient to support any award." The district court denied the motion for summary judgement with respect to the claim for monetary damages to give Mr. Haynes an opportunity to substantiate this claim at trial.

At trial, Mr. Haynes presented evidence that his business declined because the secrecy order prevented him from actively marketing his other products as well as the invention in the '544 application. The district court concluded, however, that Mr. Haynes did "not establish that the secrecy order inhibited or restricted [him] in any way in the business of manufacturing and selling bow thrusters using his earlier-patented

technology." The district court further stated that "[t]he failure of his business to be sufficiently profitable was due to other causes [including] the October 1987 stock market decline."

The district court found that Mr. Haynes did not show that he "lost any sales, sustained any losses, or experienced any decline in the value of his business as a result of the secrecy order." The district court therefore concluded that "[a]ny assumption that [Mr. Haynes] sustained damage as a result of the secrecy order would be entirely speculative. [Mr. Haynes] has thus not sustained his burden of proof as to either the fact or the amount of damage." Mr. Haynes appealed to the 9th Circuit. The case was transferred to this court upon motion of the Government.

On appeal, Mr. Haynes argues that the district court erred in failing to consider the U.S. Navy's actions denying him continuing research opportunities. He further claims district court error in not awarding him the value of his services and materials invested in researching and developing the invention subject

to the secrecy order. Mr. Haynes also alleges numerous other errors in the district court's decision, including failure to consider that he was effectively prohibited from promoting and selling his previous inventions, that the Navy cooperated with his competitor by not imposing similar restrictions on them, and that the Navy made questionable recommendations including encouraging him to do business with the Russians. Mr. Haynes finally challenges the district court's failure to take into account that he quit his business as a result of the secrecy order, that the Navy might not have had authority to release him from the secrecy order, that the Navy has power over the ship equipment supply industry and should encourage new entrants, and that his behavior was reasonable in responding to his concerns about being fined, imprisoned or killed if he violated national security constraints.

II.

The district court rendered judgement under Fed. R. Civ. P. 52. Rule 52(a) describes the standard of

review to be used by this court when reviewing a district court's Rule 52 judgement. Specifically, Rule 52(a) provides that "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." Therefore, the "clearly erroneous" standard applies to the district court's fact finding. See Gechter v. Davidson, 116 F.3d 1454, 1456, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948).

Under the applicable statute, an inventor has a right to compensation for damages arising from the imposition of a secrecy order: "An applicant . . . whose patent [is placed under a secrecy order] shall have the right . . . to apply to the head of any department or agency who caused the order of secrecy." 35

U.S.C. § 183. "If full settlement of the claim cannot be effected" with the department or agency, the statute also authorizes "[a] claimant [to] bring suit against the United States . . . for an amount which when added to the [agency or department] award shall constitute just compensation for the damage." Id. To recover, however, plaintiff must prove more than speculative or conjectural damages. Plaintiff must show actual damages by providing "real concrete evidence of damage." Constant v. United States, 617 F.2d 239, 244, 206 USPQ 313, 319 (Ct. Cl. 1980).

Although the secrecy order restricted Mr. Haynes' right to market and sell the invention disclosed in the '544 application, it did not affect his right to market and sell his inventions in his earlier patents. Mr. Haynes knew this. Not only did Navy representatives advise him that he was free to market and sell the inventions embodied in his earlier patents, Mr. Haynes responded with letters to the Navy stating his understanding of this fact. Although Mr. Haynes alleges that the secrecy order caused him to market

his products in a very "low key way," the record shows that Mr. Haynes continued to manufacture and sell bow thrusters embodying the technology described in his previous patents during the period covered by the secrecy order.

Additionally, although Mr. Haynes produced evidence about the demand for, as well as the quality and success of, his other products, he provided no clear evidence of a potential or existing market for the invention disclosed in the '544 application. Mr. Haynes did not show either a demand for the invention embodied in the '544 application or lost sales as a result of the secrecy order.

Mr. Haynes' allegations that the decline and closing of his business resulted from the imposition of the secrecy order are also insufficient to show clear error in the district court's decision. First, Mr. Haynes admitted that the decline in his business was at least partly a result of the stock market decline of 1987. Furthermore, although Mr. Haynes alleges that the ultimate closing of his business resulted from the secrecy order, the record

shows that the closing did not occur due to a loss of sales or a lack of business opportunities, but rather, because Mr. Haynes diverted time from his business to study law in order to pursue this claim. In fact, Mr. Haynes presented evidence of continued interest in his products, suggesting that he could have stayed in business had he so chosen. Finally, the closing did not occur until 1993, three years after the secrecy order was lifted. Thus, Mr. Haynes did not show that the secrecy order was the cause of any harm to his business.

This court has examined appellant's other contentions and finds them similarly unpersuasive. Mr. Haynes' allegations on appeal fall short of establishing the required "clear error" for overturning the district court's decision. Therefore, the decision of the district court is affirmed.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

October 5, 1998

Mr. Hendrick W. Haynes
17427 195th Place, SE
Renton, WA 98058

Re: Hendrick W. Haynes
v. United States
No. 97-8805

Dear Mr. Haynes:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

/s/

William K. Suter, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

NOTICE OF SUBMISSION WITHOUT
ORAL ARGUMENT

98-1458

HAYNES V US

This appeal will be submitted to a panel of three judges of the court on November 2, 1998. The panel will decide the appeal on the briefs without oral argument.

If the petitioner (or appellant) wishes to answer points raised in the respondent's or appellee's brief and has not yet done so, an informal memorandum may be filed. The memorandum, not to exceed 5 pages, may be typewritten on 8 1/2 by 11 inch paper. An original and six copies of the memorandum should be filed on or before October 14, 1998.

After the appeal has been decided, you will be sent a copy of the panel's decision by mail.

Although appeals are usually decided soon after the submission date, in some instances a longer period is required. In any event, you will be notified promptly.

FOR THE COURT

JAN HORBALY
CLERK

September 21, 1998

cc: HENDRICK W. HAYNES
F. JEFFERSON HUGHES

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

98-1458

HENDRICK W. HAYNES,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

ON MOTION

O R D E R

Upon consideration of Hendrick W. Haynes' motion for an extension of time to file additional copies of his appendix,

IT IS ORDERED THAT:

The motion is granted.

FOR THE COURT

AUG 14 1998 _____/s/_____
Date Jan Horbaly
Clerk

cc: Hendrick W. Haynes
F. Jefferson Hughes, Esq.

FILED
U. S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

s8 AUG 14 1998

JAN HORBALY
CLERK

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

98-1458

HENDRICK W. HAYNES,

Plaintiff-Appellant,

v.

UNITED STATES,

Defendant-Appellee.

Before LOURIE, Circuit Judge.

O R D E R

Upon consideration of Hendrick W. Haynes' motion to stay proceedings in this court pending disposition of a petition for writ of certiorari at the United States Supreme Court.

IT IS ORDERED THAT:

(1) Haynes' motion is denied. Haynes should promptly inform the court of the action taken on his petition by the Supreme Court.

(2) The United States should calculate its brief due date from the date of filing of this order.

AUG - 3 1998
Date

/s/
Alan D. Lourie
Circuit Judge

cc: Hendrick W. Haynes
F. Jefferson Hughes, Esq.

FILED
U. S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

AUG - 3 1998

JAN HORBALY
CLERK

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

June 8, 1998

Mr. Hendrick W. Haynes
17427 195th Place, SE
Renton, WA 98058

Re: Hendrick W. Haynes
v. United States
No. 97-8805

Dear Mr. Haynes:

The Court today entered the following order in the above entitled case:

The motion of petitioner for leave to proceed in forma pauperis is denied. Petitioner is allowed until June 29, 1998, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

Sincerely,

/s/
William K. Suter, Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

April 24, 1998

Mr. Hendrick W. Haynes
17427 195th Place, SE
Renton, WA 98058

Re: Hendrick W. Haynes
v. United States
No. 97-8805

Dear Mr. Haynes:

The petition for a writ of certiorari in the above entitled case was filed April 15, 1998 and placed on the docket April 23, 1998 as No. 97-8805.

A form is enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk

by

/s/
Clayton R. Higgins, Jr.
Assistant

Enclosures

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HENDRICK W. HAYNES, Plaintiff-Appellant,	No. 97-35991
vs.	DC# CV-96-50-WLD
UNITED STATES OF AMERICA Defendant-Appellee	Western Washington (Seattle)
	O R D E R

Before: BROWNING, KLEINFELD, and THOMAS, Circuit Judges

Appellee's apposed motion to transfer this appeal to the United States Court of Appeals for the Federal Circuit is granted. See 28 U.S.C. 1631; Animal Legal Defense Fund v. Quigg, 900 F.2d 195 (9th Cir. 1990). The Clerk shall transfer this appeal to the United States Court of Appeals for the Federal Circuit. Upon transfer of this appeal, the Clerk shall close this docket.

F I L E D

JAN 16 1998

Cathy A. Catterson,
Clerk
U.S. Court of Appeals

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HENDRICK W. HAYNES, Plaintiff vs. UNITED STATES, Defendant	No. C96-50WD O R D E R DENYING MOTION FOR RECONSIDERATION AND FOR NEW TRIAL

Plaintiff's motion for reconsideration and for new trial has been fully considered and is hereby denied.

The clerk is directed to send copies of this order to all counsel of record and to the pro se plaintiff.

Dated: October 20, 1997.

/s/

William L. Dwyer
United States District Judge

FILED
OCT 20 1997
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

ORDER DENYING MTN FOR RECONSIDERATION, ETC.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
(AT SEATTLE)

HENDRICK W. HAYNES, Plaintiff vs. UNITED STATES OF AMERICA) Defendant	No. C96-50WD JUDGEMENT IN A CIVIL CASE

X Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Judgement is entered for defendant.

October 3, 1997
Date

BRUCE RIFKIN
Clerk

/s/
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HENDRICK W. HAYNES, Plaintiff	No. C96- 50WD
vs.	FINDINGS OF FACT
UNITED STATES, Defendant	AND CONCLUSIONS OF LAW

FILED
OCT -3 1997
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

I. INTRODUCTION

This is an action by an inventor, pursuant to 35 U.S.C. 183, to recover damages allegedly caused by the issuance of a secrecy order, issued pursuant to 35 U.S.C. 181-188, concerning his patent application. The case was tried to the court on September 23-24, 1997. Both parties presented evidence, rested their cases, and presented closing argument. The exhibits and testimony received in evidence, and the briefs and arguments of the parties, have been fully considered. Pursuant to Fed. R. Civ. P. 52, the court now makes and enters the following findings of fact and conclusions of law. Any finding of fact that should be denominated a conclusion of law is adopted as such, and vice versa.

II. FINDINGS OF FACT

The following facts are now found based upon stipulation of the parties or a preponderance of the evidence:

1. Plaintiff is a capable designer and inventor of marine engineering products. On or about October 31, 1986, he filed a patent application (No. 925,544) with the United States Patent and Trademark Office ("USPTO"). This application sought to patent a "marine propulsion device with gaseous boundary layer for a thrust jet flow stream exhibiting stealth and ice lubrication properties." Plaintiff had previously received patents in 1985 and 1986 for marine propulsion devices possessing an "engine heat recovery system and streamlining hull closures" and a "gaseous boundary layer for thrust jet flow stream," respectively.

2. Plaintiff's inventions were meant to be used in the fabrication of bow thrusters, which are devices that assist in maneuvering maritime vessels. For a period of years plaintiff manufactured bow thrusters. There is substantial evidence that his products were of high quality and satisfactory to his customers.

3. On or about December 18, 1987, the USPTO, following

consultation with the Department of the Navy, imposed a secrecy order on patent application No. 925,544 pursuant to 35 U.S.C. § 181. This was done because of the "stealth" capabilities claimed in the application.

4. The secrecy order did not limit plaintiff's ability to continue exploiting the technology involved in his previously issued patents. Plaintiff was so advised, and so understood. Through his corporation, Wolfpak Marine Corporation, he manufactured and sold bow thrusters using his previously patented technology for several years after the secrecy order was issued.

5. On December 16, 1988, and December 18, 1989, the USPTO renewed its secrecy order. On February 21, 1990, the USPTO rescinded the secrecy order. The order was thus in effect for about two years and two months. On December 25, 1990, the USPTO granted plaintiff's patent application and issued him patent No. 4,979,917 ("the '917 patent").

6. At the time the secrecy order was issued -- fourteen months after the patent application was filed -- plaintiff had not fabricated a bow thruster utilizing the technology embodied in what became the '917 patent.

7. On April 16, 1992, more than two years after the secrecy order was rescinded, plaintiff filed an administrative claim with the Navy for damages allegedly caused by the secrecy order. On February 2, 1995, the Navy denied the claim. This action followed.

8. The evidence does not establish that the secrecy order inhibited or restricted plaintiff in any way in the business of manufacturing and selling bow thrusters using his earlier-patented technology. The failure of his business to be sufficiently profitable was due to other causes. One of those causes, according to a 1989 letter from plaintiff to the USPTO, was the October 1987 stock market decline and a resulting drop in demand for his products.

9. While there is voluminous evidence about the technical properties and functioning of plaintiff's inventions, it has not been shown that plaintiff lost any sales, sustained any losses, or experienced any decline in the value of his business as a result of the secrecy order concerning what eventually became the '917 patent. Any assumption that plaintiff sustained damage as a result of the secrecy order would be entirely speculative. Plaintiff has thus not sustained his burden of proof as to either the fact or the amount of damage.

III. CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the court now makes and enters the following conclusions of law:

1. The court has jurisdiction herein pursuant to 35 U.S.C. § 183.

2. Proof of actual damages, rather than speculative damages, is required for a claimant to recover under 35 U.S.C. § 183. See Constant

v. United States , 617 F.2d 239, 244 (Ct. Cl. 1980); Constant v. United States , 1 Cl. Ct. 600, 602, aff'd 714 F.2d 162 (Fed. Cir. 1983); Constant v. United States , 16 Cl. Ct. 629, 633, aff'd 884 F.2d 1398 (Fed. Cir. 1989). No such proof has been presented here.

3. Accordingly, judgement will be entered for the defendant.

The clerk is directed to send copies of these findings and conclusions to counsel of record and to the plaintiff.

Dated: October 3, 1997.

/s/

William L. Dwyer
United States
District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HENDRICK W. HAYNES, Plaintiff, vs. UNITED STATES, Defendant.	)	No. C96-00 50WLD O R D E R _WLD_

FILED
MAY 29 1997
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

Having considered the United States' Motion in Limine, and plaintiff's opposition thereto, IT IS HEREBY ORDERED that the motion is GRANTED. At trial, plaintiff may not argue that the government "used" the subject matter of the patent in dispute or that imposition of the Secrecy Order by the United States Patent and Trademark Office constituted a Fifth Amendment "taking."

Dated: May 29, 1997

/s/
(William L. Dwyer)

UNITED STATES DISTRICT JUDGE

Presented by:

/s/
HAROLD MALKIN
Assistant U.S. Attorney

UNITED STATES ATTORNEY
Seafirst Fifth Avenue Plaza Building
800 Fifth Avenue, Suite 3600
Seattle, Washington 98104
(206) 553-7970

M I N U T E S

HONORABLE WILLIAM L. DWYER
UNITED STATES DISTRICT COURT

DEC 02 1996
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

DEPUTY: Eileen Scollard
REPORTER: Susan Palmerton
DATE: 12/2/96

10:30 a.m.

C96-50 WD Hendrick Haynes Pro Se
vs
United States Harold Malkin

ORAL ARGUMENT ON GOVTS. SUMMARY JUDGMENT MOTION

Called. Counsel and plaintiff present. Court hears oral argument on summary judgment motion and Govts. motion to exclude witnesses. The court denies the motion for summary judgment. The court adopts Mag. Judge. Weinberg's recommendation to grant summ. judg. motion as to all claims by plaintiff to non-monetary relief.
The court directs each side to serve and file trial witness lists with short statement as to subject matter of their testimony. Depositions of these persons to be taken no later than 2/13/97. Clerk to enter new sc[h]eduling order, with new trial date, discovery date, etc. Court directs that parties return to Mr. Cutler for resumed mediation.

JUDGE DWYER MINUTES DATE: 12/2/96

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HENDRICK W. HAYNES, Plaintiff, v. UNITED STATES OF AMERICA Defendant.	CASE No. C96- 50WD REPORT AND RECOMMEND- ATION ON MOTION FOR SUMMARY JUDGMENT

INTRODUCTION AND SUMMARY

Defendant United States moves for summary judgment, claiming that: (1) plaintiff's proof of damages at trial will be speculative, at best, and therefore legally insufficient to support any award; and (2) his claims for non-monetary relief must be dismissed as a matter of law. For the reasons discussed more fully below, the court should deny the motion as to plaintiff's damages claims. Considering the evidence in a light most favorable to plaintiff, as the non-moving party, the court should conclude that he might be able to establish with sufficient certainty some portion of the damages he seeks; and that the uncertainties as to the fact and amount of damages are attributable, at least in part, to defendant's secrecy order. The court should grant, however, the motion for summary judgment dismissing plaintiff's claims to non-monetary relief.

FACTUAL AND PROCEDURAL BACKGROUND

For purposes of this motion, the court must resolve all factual issues in favor of plaintiff, the non-moving party. Given that assumption, the following are the facts which govern this motion.

Plaintiff is an inventor. Involved in this case is a series of inventions comprising a system of underwater nozzles, to be used with bow thrusters, in assisting vessels in maneuvering. In prior years, plaintiff received patents for elements of this system. Plaintiff had continuing income arising from those patents, presumably in the form of royalties and/or commercial sales of products incorporating his patented system.

In October of 1986, he applied for a patent for an improved, more sophisticated version of the system. The patent application included the word "stealth." In December of 1987, the U.S. Patent and Trademark Office, acting at the direction of the U.S. Navy, issued a "Secrecy Order" covering the patent application and its subject matter,

pursuant to 35 U.S.C.§§ 181-188. The order recited that the "...patent application has been found to contain subject matter the unauthorized disclosure of which would be detrimental to the national security." Plaintiff was ordered to keep the subject matter secret, and not to disclose it to any person except as specifically authorized. (Docket no. 27, exh. 2). The Secrecy Order was twice renewed and finally rescinded on February 21, 1990. The patent then issued in December 1990.

Plaintiff claims, and the United States does not dispute, that during the time the Secrecy Order was in effect, he was effectively prohibited from selling and promoting his inventions. This limitation extended not only to the modified version covered by the pending patent application, but also to the earlier versions, because the earlier versions were incorporated in the new one.

Plaintiff brings this action pursuant to 35 U.S.C. § 183. That section establishes a right to recover any damages attributable to

the issuance of a secrecy order.

183 provides, in relevant part:

> 183. Right to compensation
>
> An applicant, ... whose patent is withheld as herein provided, shall have the right, ... to apply to the head of any department or agency who caused the order to be issued for compensation for the damage caused by the order of secrecy .... If full settlement of the claim cannot be effected, the head of the department or agency may award and pay to such applicant, ... a sum not exceeding 75 per centum of the sum which the head of the department or agency considers just compensation for the damage .... A claimant may bring suit against the United States in ... the District Court of the United States for the district in which such claimant is a resident for an amount which when added to the award shall constitute just compensation for the damage....

Plaintiff filed an administrative claim. The Navy denied it, finding that plaintiff's damages claims were too speculative. Plaintiff then filed this action.

DISCUSSION

The United States asserts it is entitled to the entry of summary judgment because plaintiff has not made a sufficient showing of any damages other than speculative or conjectural damages.

The United States is correct that, to recover, plaintiff must prove more than speculative or conjectural damages. He must show actual damages, by introducing "real and concrete evidence of damage." Constant v. United States, 617 F.2d 239, 244 (Ct. Cl. 1980) ("Constant I").

But the rulings in the series of Constant cases also supports the conclusion that it would be premature to grant the motion for summary judgment. While finding that a plaintiff must show more than speculative damages, the court

in Constant I found that the allegations of the plaintiff in that case were sufficient to withstand a motion to dismiss. The case then proceeded to trial, and only after the plaintiff had made his evidentiary showing did the court dismiss for inadequacy of his proof on damages. Constant v. United States, 1 Ct. Cl. 600, aff'd, 714 F.2d 162 (Fed. Cir. 1983) ("Constant II").

Similarly, plaintiff should be permitted to make his showing at trial in this case before the court evaluates its legal sufficiency. It is true that he is required to make a factual showing in opposition to the motion for summary judgment. But in evaluating the sufficiency of his showing, the court must take into account that plaintiff is proceeding pro se, and apply a less stringent standard as to the form of plaintiff's response.

As to the substance of that response, plaintiff has in fact shown - or at least raised a genuine issue - as to whether the secrecy order interfered with continued sales of his existing products

(see pages 18 and 20 of "Plaintiff's Memorandum in Answer to the United States' Motion for Summary Judgement," and page 2 of docket no. 35, plaintiff's response to the United States' Reply). If proved at trial, this is an element of damages which did not exist in the Constant cases. In addition, of course, he presents the same claim as asserted by Constant: that the secrecy order prevented him from marketing the technology covered by his most recent patent application. Here, too, the court cannot conclude as a matter of law that plaintiff will be unable to prove any "actual" damages.

The court should therefore deny the motion insofar as it rests upon the argument that plaintiff's proof of damages is too speculative or conjectural.

The United States also seeks summary judgment as to all claims by plaintiff to non-monetary relief. Specifically, plaintiff seeks to have the court treat his business as a "casualty of war;" to require the United States to issue a "thank you" and a medal of commendation or a

certificate of appreciation to all inventors who have been the subjects of secrecy orders; to require the Small Business Administration to accord preferential treatment; and to require the United States to create an "Office of Innovation Research." In a compilation of his requested relief, he included, "Plaintiff would also like to have the Privilege of using the military facilities at the military facility on Waikiki Beach, Honolulu, Hawaii, which includes a fine hotel, a white sand beach, a park, and guarded parking lot." (Exh. 13 to docket no. 27, at 10.)

The statute under which plaintiff has filed this case, 35 U.S.C. 183, limits any recovery to monetary damages. The motion for summary judgment should be granted as to all claims to non-monetary relief.

A proposed form of order accompanies this Report and Recommendation.

Dated this __7__ day of October, 1996.

/s/

John L. Weinberg
United States Magistrate
Judge

(extract from Civil Cover Sheet to Federal District Court, Western District of Washington (Seattle) case number Cv 96-50 WLD, submitted 9 January 1996 with COMPLAINT; see Haynes v. US CA FC case #98-1458, appendix Vol. 1, section "COVER SHEET & COMPLAINT" at Vol. rear); "COMPLAINT" admitted in petitioners exhibit "COMPLAINT" following exhibit 300.3, in District Court Exhibits Volume 11.

JS 44
(Rev. 07/89)

C I V I L C O V E R
S H E E T

I. (a) PLAINTIFFS DEFENDANTS

Haynes,
Hendrick W.
(PRO SE)

United States

(b) County of residence of first listed plaintiff
KING

County of residence of first listed defendant
WASHINGTON, DISTRICT OF COLUMBIA

IV. CAUSE OF ACTION
35 USCA 183. USN Administrative process, including appeals, has been exhausted; and plaintiff has been denied. Denial is not supported by substantial evidence and applies an erroneous standard of law. Plaintiff asks for what is rightful & lawful.

V. NATURE OF SUIT
PROPERTY RIGHTS _X_ 830 Patent

VII. REQUESTED IN COMPLAINT
CHECK IF THIS IS A CLASS ACTION ?
DEMAND (1)
What is rightful and lawful.

DATE 9 Jan. '96

(1) The matter in controversy EXCEEDS, exclusive of taxes, costs and interest, the sum of $ 2,000,000.00 (EXCEEDS . . . two million dollars).

In District Court Plaintiff's
Admitted Trial Exhibit # 300.3

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
2531 Jefferson Davis Hwy
Arlington, VA 22242-5160

IN REPLY REFER TO
5890.3
Ser 00L51-26/231
31 May 1995

Mr. Hendrick W. Haynes
17427 195th Place SE
Renton, Washington 98058

Re: Administrative Claim H-112
by Hendrick Haynes

Dear Mr. Haynes:

We received your letters of 15 Mar 1995, 18 Mar 1995, and 12 Apr 1995, requesting reconsideration of the denial of your administrative claim set forth in our letter of 2 February 1995. We have looked beyond the argument and legal

quotations in your letters for real concrete evidence of damage, beyond what the court in C o n s t a n t calls speculative damages.

In your attempt to show several years of sales prior to the imposition of the secrecy order, you show data for 1984 and 1985. It is unlikely that the 1984 data is for devices made according to the specification on which the secrecy order was placed. If it were, you would have been selling the eventually patented invention more than one year prior to the first application date, which would form a statutory bar to the patenting of the invention under 35 USC 102. Therefore, we assume that you are discussing the total sales of the company for all product lines, and not sales of the invention in question. The various product lines covered by the calculations are nowhere made clear.

The total sales of the company from all sources do not form an appropriate basis for calculating loss of sales due to the secrecy order. The secrecy order could not affect sales of your product line

which existed prior to the invention covered by the patent application on which the secrecy order was placed. By not separating sales of the preexisting product line from the product line embodying the invention subject to the secrecy order, the calculations swamp the trend lines with irrelevant data, eliminating any validity they might otherwise have.

We can find nothing in the additional material you have presented to change the opinion that the claim was properly rejected for failure to provide necessary proof of damages.

Sincerely,

/s/
W. C. TOWNSEND

In District Court Plaintiff's
Admitted Trial Exhibit # 300.2

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
2531 Jefferson Davis Hwy
Arlington, VA 22242-5160

IN REPLY REFER TO
5890.3
Ser 00L51-24/84
03 MAR 1995

Mr. Hendrick W. Haynes
17427 195th Place SE
Renton, Washington 98058

Re: Administrative Claim H-112
by Hendrick Haynes

Dear Mr. Haynes:

The following information is provided as requested in your letter of 20 February 1995 to this office.

I was referring to a report of Gould Defense Systems, Inc., of which I have only seen the cover page and

the abstract. The report is dated March 31, 1984 and is numbered OSD-771-HYDRO-IRAD-84-01. Both from the contents and the date, I do not believe it to be particularly relevant to the question then under consideration, i.e., use of your invention by the Government. In any event, the report is proprietary to Gould, and the Navy cannot provide you with a copy of it.

Your patent application was placed under secrecy order because, upon review by the cognizant technical code, it was believed that publication of the invention contained therein might be detrimental to the nationalsecurity. See Title 35 United States Code, Section 181. However, the reason for the secrecy order has no bearing upon whether or not you have a right to any compensation.

There is no appeal, as such, of the denial in our letter of 2 February 1995. If you file a request for reconsideration of the denial, together with new evidence or an explanation of why you believe the evidence already submitted to be sufficient, your claim will be

reconsidered, generally by the same people who denied it in the first place. Since the claim has already been denied, their might be a cut-off date for further proceedings beginning six years after the patent in question was issued (December 25, 1996), under the terms of Title 35 U.S.C. section 183. I have never seen this question discussed, and I call it to your attention merely as something that you ought to be aware of.

You also have the right to bring suit against the United States under the provisions of section 183. If you contemplate this, you would be well advised to seek advise from a private attorney rather than from us.

I hope this answers the questions which you propounded.

Sincerely,

/s/
K. W. DOBYNS
Associate Counsel (Patents)

In District Court Plaintiff's
Admitted Trial Exhibit # 300.2

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
2531 Jefferson Davis Hwy
Arlington, VA 22242-5160

IN REPLY REFER TO
5890.3
Ser 00L51-24/31
02 Feb 1995

Mr. Hendrick W. Haynes
17427 195th Place SE
Renton, Washington 98058

Re: Administrative Claim H-112
by Hendrick Haynes

Dear Mr. Haynes:

Your administrative claim, identified above, is divided into three parts. Title 35 United States Code, section 183, gives you the right to apply for compensation for any damage caused by the order of secrecy imposed on your application

and/or for the use of the invention by the Government, resulting from your disclosure.

The first part treated here is a general allegation of infringement of one or more of your U.S. Patents 4,552,537, 4,611,999, and 4,979,917. The second part treated here is the use of your invention by the Government, resulting from your disclosure. We have done a diligent search for any use of your invention by the Navy, whether or not resulting from your disclosure. Nothing relevant has been found. The closest thing found was contained in proprietary reports of a contractor, which we are not at liberty to reproduce, showing experimental use of a somewhat similar system at least two years before the application date of serial number 925,544. However, we have no indication that this use continued into the period when that application was pending. Even if it did, the use did not result from your disclosure. We also have been unable to find anything to infringe the claims of any of your three patents. Therefore, we conclude that there is no use of your

invention by the Government resulting from your disclosure.

The third part treated here is for damage caused by the imposition of the secrecy order on application serial number 925,544, which later issued as U.S. Patent No. 4,979,917. The basic procedure for measuring damage under these circumstances is set forth in a series of three cases, all called C o n s t a n t v. U . S ., all before the U. S. Claims Court or U. S. Court of Claims. They are respectively a 1980 case at Volume 206 United States Patent Quarterly pages 313-320 (i.e. 206 USPQ 313-320), a 1982 case at 216 USPQ 505-512, and a 1989 case at 12 USPQ2d 1727-1733 (i.e. USPQ second series). There are also alternative possible citations of these cases in other reporter systems. I believe we have previously furnished you with copies of these decisions. If not, let me know and they will be sent out immediately.

The C o n s t a n t cases state that neither the courts nor the administrative agencies would or should award purely speculative

damages, but that there would have to be real concrete evidence of damage, actual damages, proven damages, or perhaps a greater degree of proof or ability to prove damages. This is a tough standard of proof, but it is the one we are all bound to follow.

In your proffer of proof in your letter of 9 July 1994, you measure the rate of increase in your business from the first year to the second, then make the assumption that the year-to-year increase through any number of succeeding years would be at the same rate. There is no basis for this assumption except speculation, which is not allowed under the case law. One could also speculate that, in the third year, the business would have disappeared completely, without any secrecy order involvement.

In the Lam, Inc. v. Johns-Manville Corporation et al case which you cited, also available at 219 USPQ 670-678, the projected lost sales were predicted based upon the rate of growth of business for several years of sales prior to the

infringement and another several years of sales after the infringement had ended. This is enough to form some idea of acceleration or deceleration of the rate of change. Indeed, the court of appeals specifies that pre-infringement and post-infringement growth rates were needed to avoid speculation.

The secrecy order was removed on 21 February 1990. Post-secrecy-order growth rates, while potentially possible, have not been shown at all. Instead, your projected growth rates based upon one year's growth have just been continued into the period after the secrecy order was removed.

There has been no proof of damages as required by the C o n s t a n t cases. The speculation which you presented will not suffice for the purpose.

Your administrative claim is denied.

Yours truly,

/s/
W. C. TOWNSEND
Patent Counsel

In District Court Plaintiff's
Admitted Trial Exhibit # 300.2

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
2531 Jefferson Davis Hwy
Arlington, VA 22242-5160

IN REPLY REFER TO
5890.3
Ser 00L51-24/31
08 Aug 1994

Mr. Hendrick W. Haynes
17427 195th Place SE
Renton, Washington 98058

Re: Administrative Claim H-112
by Hendrick Haynes

Dear Mr. Haynes:

This is responsive to your letter of July 30, 1994. Mrs. Weber has left this office, and your administrative claim, formerly assigned to her, has been reassigned to me.

We did receive your letter of July

9, 1994, and your estimate of one pound twelve ounces seems about accurate. I have started several times to read it, but it is too extensive to be finished in one or two sittings.

In answer to your other inquiry, I find your letter of March 13, 1993, in the file, but no copy of a patent application. There is also what appears to be a power to inspect and make copies of patent application serial number 08/006,958, filing date and title not given. I suspect that this application is not involved in the present administrative claim, the application having apparently been filed after the administrative claim was filed.

Yours truly,

/s/
K. W. DOBYNS
Associate Counsel (Patent)

In District Court Plaintiff's
Admitted Trial Exhibit # 300.1

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
2531 Jefferson Davis Hwy
Arlington, VA 22242-5160

IN REPLY REFER TO
5890.3
Ser 00L5/172
22 Apr 1994

Mr. Hendrick W. Haynes
17427 195th Place SE
Renton, Washington 98058

Dear Mr. Haynes:

This office is currently investigating your administrative claim under 28 U.S.C. 1498, with regard to U.S. Patents numbered 4,552,537; 4,611,999; and 4,979,917. This office is also investigating your claim for compensation under 35 U.S.C. 183 for any damages caused by the secrecy order on your U.S. Patent Application number

06/925,544; and for any use of this invention by the Government which resulted from your disclosure of this invention to the Government.

This office has been conducting an investigation into whether any of the marine propulsion devices described in U.S. Patents numbered 4,552,537; 4,611,999; and 4,979,917 have been used or manufactured by or for the Navy. Thus far, we have found no evidence of such devices being used or manufactured by or for the Navy. However, we have not received complete responses from all of the Navy offices which we questioned. We will continue to investigate this claim.

Regarding your claim under 35 U.S.C. 183 for any damages caused by the secrecy order on your U.S. Patent Application number 06/925,544, you must provide this office with concrete and specific evidence of actual damages. Government imposition of a secrecy order covering a patent application does not, by itself, constitute a compensable taking of the invention. An inventor whose patent has been withheld under a secrecy order may

obtain compensation under the procedures established under 35 U.S.C. 183. Constant v. United States, 16 Cl.Ct. 629, 632 (1989), cert. denied, 493 U.S. 1002 (1989).

By your letter of December 29, 1992, you present your arguments for damages caused by the secrecy order. This letter fails to provide concrete and specific evidence of actual damages. You must provide this office with evidence of actual damages in order to recover compensation under 35 U.S.C. 183 for any damages caused by the secrecy order. The most relevant decisions on claims for compensation under 35 U.S.C. 183 are Constant v. United States, 617 F.2d 239 (Ct.Cl. 1980); Constant v. United States, 1 Cl.Ct. 600 (1982), cert. denied, 464 U.S. 1041 (1984), reh'g denied 465 U.S. 1074 (1984); and Constant v. United States, 16 Cl.Ct. 629 (1989), cert. denied, 493 U.S. 1002 (1989). The courts indicated in these cases that conjectural damages will not be awarded, and that actual damages must be proven, or real concrete evidence of damage must be provided, before an award will be made. "The burden is on the

applicant to show how he has been damaged by the secrecy order and the damages flowing therefrom." Constant v. United States, 16 Cl.Ct. 629, 636 (1989), cert. denied, 493 U.S. 1002 (1989).

Sincerely,

/s/
TAMMY WEBER
Assistant Patent Counsel

In District Court Plaintiff's
Admitted Trial Exhibit # 300.1

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
2531 Jefferson Davis Hwy
Arlington, VA 22242-5160

IN REPLY REFER TO
5890.3
Ser 00L5/442-TW
25 Jun 93

Mr. Hendrick W. Haynes
17427 195th Place SE
Renton, Washington 98058

Dear Mr. Haynes:

In your letter of 25 May 1993, you offer to "sell" your patents to the Navy. The Navy does not wish to "buy" your patents.

This office is currently investigating your claim for compensation under 35 U.S.C. 183 for any damages caused by the secrecy order on your U.S. Patent

Application number 06/925,544; and for any use of this invention by the Government which resulted from your disclosure of this invention to the Government.

The Office of Naval Research has docketed an administrative claim under 28 U.S.C. 1498, with regard to U.S. Patents numbered 4,979,917; 4,611,999; and 4,552,537. This office will investigate whether there has been any use of these inventions by the Navy.

Sincerely,

/s/
TAMMY WEBER
Assistant Patent Counsel

In District Court Plaintiff's
Admitted Trial Exhibit # 300.1

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
OFFICE OF NAVAL RESEARCH
800 North Quincy Street
Arlington, VA 22217-5660

IN REPLY REFER TO
5870
Ser 1230/567-TW
June 1, 1993

Mr. Hendrick W. Haynes
17427 195th Place SE
Renton, Washington 98058

Dear Mr. Haynes:

Your letter of December 29, 1992 to Ms.Tammy Weber of the Naval Sea Systems Command has been referred this office which has responsibility for patent matters with the Navy. In your letter you requested the administrative claims be initiated for United States Patent Nos. 4,979,917; 4,611,999; and 4,552,537.

Regarding United States Patent Application No. 06/925,544 which issued as United States Patent No. 4,979,917, you were advised that an administrative claim was assigned to the Naval Sea Systems Command by letter of July 7, 1992. By that letter you were informed that an investigation would be made into whether you are entitled to compensation for any damage caused by the imposition of an order of secrecy and/or use by the Navy resulting from the disclosure of United States Patent Application No. 06/925,544. This claim is still pending.

It has been determined that there is sufficient information to docket an administrative claim under, 28 U.S.C. 1498, in accordance with the Department of Defense regulations with regard to United States Patent Nos. 4,979,917; 4,611,999; and 4,552,537. An investigation will be made into whether there has been use by the Navy of the inventions as described in United States Patent Nos. 4,979,917; 4,611,999; and 4,552,537.

The investigation will be made as part of the existing administrative claim which has been assigned to Mr. W. C. Townsend, Senior Patent Attorney for the Naval Sea Systems Command, for investigation and administrative determination. Representatives of that office will communicate with you concerning this matter. Should you have any questions regarding this claim, please call Mr. Townsend at (703) 602-1776 ext. 106.

/s/
JAMES DENNIS FREW
Attorney
Claims and Litigation

Copy to:
NAVSEA Code 00L

In District Court Plaintiff's
Admitted Trial Exhibit # 300.1

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
2531 Jefferson Davis Hwy
Arlington, VA 22242-5160

IN REPLY REFER TO
5500
Ser 00L5/244-TW
19 Mar 93

Mr. Hendrick W. Haynes
c/o Wolfpak Marine Corporation
P.O. Box 66152
Seattle, Washington 98166

Dear Mr. Haynes:

This office has received your letter of 13 March 1993 expressing concern about the possibility of the Government imposing a secrecy order on your patent application serial number 08/006,958. Please check the Filing Receipt issued by the U.S. Patent and Trademark Office. If this receipt states "FOREIGN FILING LICENSE GRANTED", then your patent

application is not subject to a secrecy order.

Your letter indicates that you may require legal advise. THIS OFFICE REPRESENTS ONLY THE INTERESTS OF THE DEPARTMENT OF THE NAVY. You are not the client of this office, and thus this office cannot provide you with legal advise. You may wish to hire a private patent attorney at your own expense to represent your interests.

/s/
TAMMY WEBER
Assistant Patent Counsel

[Petitioners note (25 Feb. 1999): Application serial number 08/006,958 was filed 21 Jan. 1993 and issued as U. S. Patent number 5,545,063 on 13 Aug. 1996. File wrapper was admitted into District Court in exhibit P-15; with issued patent also in other admitted exhibits. Cover page of patent is in CA FC case number 98-1458, Volume 9, sec. 15 (these volumes were also admitted into Supreme Court case #97-8805: however, the Clerk of the Court returned the original to petitioner

on or about 18 Feb. 1999). A copy of the Volumes admitted as appendix to HAYNES v. UNITED STATES case number 98-1458 (into the Court of Appeals for the Federal Circuit) is hereon attached by reference. A single copy of these appendix volumes (supplied to CA FC about Aug. 1998) may be supplied to the Supreme Court of the United States as reference, this comprising a Volume "i", then Volumes 1-10 inclusive (with Volume 10 being a Video). Volume "i" was reprinted as a Supreme Court of U. S. Rule 33.1 booklet (which contains corrections to the original Volume "i" Rule 33.2 petition of case #97-8805), volumes of which may be still with the Supreme Court of the United States.]

In District Court Plaintiff's
Admitted Trial Exhibit # 300.1

13 March 1993 U.S. Mail: 1 page
+ enclosure

Patented marine ANTI-COANDA EFFECT
Systems for:
Marine jet propulsion, thrusters,
water surface herders (oil, ice,
etc.), ice lubrication, sound
quieting propulsion & specialized
hull designs.

W O L F P A K
Marine Corporation
P. O. Box 66152
Seattle, WA. 98166
(206) 246-9094
FAX: (206) 432-7729

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
Washington, D.C. 20362-5101

attn: Ms. Tammy Weber
Assistant Patent Counsel
(703) 602-7077

Re: 5890.1
Ser 00L5/760-TW2

ADVISEMENT

Dear Ms. Weber;

Per my telephone conversation with you in early January, 1993, please note the enclosure with reference to a recently submitted U.S. Patent application. [#08/006,958]

37 CFR 1.14 provides for the application to be kept secret, AS A MATTER OF NORMAL PRACTICE, through means which are internal to the U.S. Patent Office. This information is proprietary.

I am requesting that you follow procedures which will be consistant with 15 [2/25/99 cor. 35] USC 182 [1983]).

As you know, I design, make, and sell objects into the stream of commerce. If there is a problem, we would need to discuss this immediately, and you will need to advise me of a proceedure wherein we can do this. Further, you may have to render legal advise.

I have no other mechanism available to me by which I may similarly control information into your hands. I hope I am satisfying any duty of

candor I may have with the USN.

Thanking you sincerely I am,

/s/
Hendrick W. Haynes

In District Court Plaintiff's
Admitted Trial Exhibit # 300.1

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
Washington, D.C. 20362-5101

IN REPLY REFER TO
5890
Ser 00L5/1-TW
6 Jan 1993

Mr. Hendrick W. Haynes
17427 195th Place SE
Renton, Washington 98058

Dear Mr. Haynes:

This office has received your letter of 29 December 1992. I am currently reviewing all the information contained in the letter and accompanying exhibits.

You have requested that this office initiate an administrative claim proceeding with reference to U.S. Patents numbered 4,979,917; 4,611,999; and 4,552,537.

Administrative procedures under the Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.7004 are initiated within the Department of the Navy by the Office of Naval Research (ONR). We have forwarded a copy of your letter to ONR for docketing and assignment of the claim. You will be receiving a letter from ONR concerning this matter.

I have enclosed a copy of DFARS 227.70, which provides information regarding the handling of infringement claims.

/s/
TAMMY WEBER
Assistant Patent Counsel

Enclosure

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
Washington, D.C. 20362-5101

IN REPLY REFER TO
5890.1
Ser 00L5/760-TW2
18 Dec 1992

Mr. Hendrick W. Haynes
17427 195th Place SE
Renton, Washington 98058

Dear Mr. Haynes:

This letter relates to your claim for compensation under 35 U.S.C. 183 for any damages caused by the secrecy order on your U.S. Patent Application number 06/925,544; and for any use of this invention by the Government which resulted from your disclosure of this invention to the Government.

Regarding your claim for "use of the invention by the Government", this office is currently investigating whether disclosure of this invention to the Government resulted in any use of the invention by the Government.

Regarding your claim for "damages caused by the order of secrecy", you will have to provide this office with some evidence of these alleged damages. The most relevant decisions on claims for compensation under 35 U.S.C. 183 are Constant v. United States, 617 F.2d 239 (Cl.Ct. 1980); Constant v. United States, 1 Cl.Ct. 600 (1982), cert. denied, 464 U.S. 1041 (1984), reh'g denied 465 U.S. 1074 (1984); and Constant v. United States, 16 Cl.Ct. 629 (1989). The courts indicate in these cases that conjectural damages will not be awarded, and that actual damages must be proved, or real concrete evidence of damage must be provided, before an award will be made. "The burden is on the applicant to show how he has been damaged by the secrecy order and the damages flowing therefrom." Constant v. United States, 16 Cl.Ct. 629, 636 (1989).

The purpose of this letter is to give you an opportunity to submit concrete evidence of actual damages.

Sincerely,

/s/
TAMMY WEBER
Assistant Patent Counsel

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Office of the Chief
of Naval Research
Arlington, Virginia 22217-5000

IN REPLY REFER TO
5500.2
Ser 00R1/834
1 Oct 92

Mr. Hendrick W. Haynes
Wolfpak Marine Corporation
P. O. Box 66152
Seattle, WA 98166

REFERENCE: Your letters of 03 Sep 92 and 26 Sep 92 to Mr. James Dennis Frew

Dear Mr. Haynes:

Mr. Frew has referred referenced correspondence to me for reply.

The U. S. Navy literally receives hundreds of letters each day from persons such as Mr. Krutov. With

the collapse of communism and the restructuring of the former Soviet Union and the East Bloc countries, U. S. security strategy is likewise in transition. This transformation has rendered obsolete a lot of our former attitudes toward Russian citizens. In today's world, while security concerns remain, the U. S. Navy is considering a number of cooperative research efforts with Soviet scientists and engineers.

If you are interested in Mr. Krutov's resume qualifications, we do not believe contacting him would pose a threat to national security.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/
PEGGY LAMBERT
SECURITY MANAGER
BY DIRECTION OF THE
CHIEF OF NAVAL RESEARCH

Copy to:
Mr. Frew

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Office of the Chief
of Naval Research
Arlington, Virginia 22217-5000

IN REPLY REFER TO
5870
Ser 00CCIP/827
July 7, 1992

Mr. Hendrick W. Haynes
17427 195th Place SE
Renton, WA 98058

Your letter of April 16, 1992 to Mr. K. W. Dobyns of the Naval Sea Systems Command has been referred this office which has responsibility for patent matters within the Navy.

Having reviewed your letter, it has been determined that there is sufficient information to docket an administrative claim in accordance with Department of Defense regulations. An investigation will

be made into whether you are entitled to compensation for any damage caused by the imposition of an order of secrecy and/or use by the Navy resulting from the disclosure of United States Patent Application No. 06/925,544.

The claim has been assigned to Mr. W. C. Townsend, Senior Patent Attorney for the Naval Sea Systems Command, for investigation and administrative determination. Representatives of that office will communicate with you concerning this matter. Should you have any questions regarding this claim, please call Mr. Townsend at (703) 602-7077.

/s/
JAMES DENNIS FREW
Attorney
Claims & Litigation

In District Court Plaintiff's
Admitted Trial Exhibit # 300

30 April 1992

W O L F P A K tm
marine corporation

Marine Propulsion, Power
Generation, and
Hydraulics
P.O. Box 66152
Seattle, WA 98166
(206) 432-7728
FAX: (206) 432-7729

DEPARTMENT OF THE NAVY
attn: 00L5
Naval Sea Systems Command
Washington, D.C. 20362-5101
attn: K. W. DOBYNS
Special Laws Administration
REF: 5890.3; Ser 0015/245-22KD;
24 Apr 92

Re:

Right to Compensation, 35 USC 183
U. S. Pat. Applic. 06/925,544
MARINE PROPULSION DEVICE WITH
GASEOUS BOUNDARY LAYER FOR A
THRUST JET FLOW STREAM EXHIBITING
STEALTH AND ICE LUBRICATION
PROPERTIES becoming USP 4,979,917
(issued 25 Dec. 1990), Secrecy
Order period 18 Dec. 1987 to 21
Feb. 1990

Sir;

Thank you for your letter (with enclosures) dated 24 April 1992.

With reference to who is the claimant, please assign the case to (on behalf of) myself, HENDRICK W. HAYNES, 17427 - 195th Plc. SE, Renton, Wa. 98058. The patent was initiated, issued, and is still owned by and in my name.

Wolfpak Marine Corp. is a small entity manufacturing company. I own all the stock therein. It has been building marine jet thrusters and bow thrusters for about 15 years.

I wait for your further instructions,

Sincerely,

/s/
Hendrick W. Haynes

enc: copy of U. S. Pat. Applic. 06/925,544 paper number 15, NOTICE OF ALLOWABILITY (FORM D-10).

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
Washington, D.C. 20362-5101

IN REPLY REFER TO
5890.3
Ser 00L5/245-22KD
24 Apr 92

Mr. Hendrick W. Haynes
c/o Wolfpak Marine Corporation
P. O. Box 66152
Seattle, Washington 98166

Dear Mr. Haynes:

The Naval Sea Systems Command has received your letter of 16 April 1992, entering a claim under 35 USC 183 and applying for compensation for damages resulting from the imposition of a secrecy order on your application serial number 06/925,544 based upon a recommendation by this command.

We have forwarded a copy of your letter to the Office of the Chief of Naval Research (OCNR) for docketing and assignment of the claim, which will almost certainly be assigned to this Command for investigation and further action. You will be receiving a letter from OCNR concerning this matter.

Your letter leaves it in doubt whether this is a claim by you personally or by you on behalf of Wolfpak Marine Corporation. Which party can make the claim would depend primarily upon which party owned the application at the time in question. Your prompt clarification of this matter is requested so that the claim can be entered to the proper party.

You asked for forms and publications and for advice on what parties to contact. Assuming that OCNR assigns the application to this Command, you will continue to contact us as the appropriate party to deal with. For this, you can await the OCNR letter.

Enclosed are copies of two

decisions, at the trial level and at the appeal level, of the case of Constant v. United States. The most relevant feature of these decisions is the holding that actual damages must be proven by real concrete evidence as a prerequisite to recovery, and that purely speculative damages will not support a recovery. To recover, you will need to provide the Government with real concrete evidence of actual damages which resulted from the imposition of the secrecy order. This will probably be the most difficult part of proving your claim. We can discuss this further if the claim is assigned to this Command for processing.

/s/
K. W. DOBYNS
Associate Counsel (Patents)

Enclosures

In District Court Plaintiff's
Admitted Trial Exhibit # 300

16 April 1992

W O L F P A K tm
marine corporation

Marine Propulsion, Power
Generation, and
Hydraulics
P.O. Box 66152
Seattle, WA 98166
(206) 432-7728
FAX: (206) 432-7729

DEPARTMENT OF THE NAVY
attn: 00L5
Naval Sea Systems Command
Washington, D.C. 20362-5101
attn: K. W. DOBYNS
Special Laws Administration

Re:
Right to Compensation, 35 USC 183
U. S. Pat. Applic. 06/925,544
MARINE PROPULSION DEVICE WITH
GASEOUS BOUNDARY LAYER FOR A
THRUST JET FLOW STREAM EXHIBITING
STEALTH AND ICE LUBRICATION
PROPERTIES becoming USP 4,979,917
(issued 25 Dec. 1990), Secrecy
Order period 18 Dec. 1987 to 21
Feb. 1990

Sir;

Under 35 USC 183, I would like to enter a claim and apply for compensation resulting from a SECRECY ORDER being imposed on me by the USN (on 18 Dec. 1987) with reference to the above invention. Could you please begin the claim process and send me any forms or publications needed, and advise me of the persons I might contact to conclude this matter.

The patent issuance has now aged now just over one (1) year, and the Rescinding Order has aged just over two (2) years.

Under 35 USC 183, it states that I should apply "to the head of any department or agency who caused the order to be issued for compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Government, resulting from his disclosure.". It further states that "The head of the department or agency is authorized, upon the presentation of a claim, to enter into an agreement with the

applicant, his successors, assigns, or legal representatives, in full settlement for the damage and/or use.".

The original Secrecy Order indicates your office as the Sponsoring Agency.

I thank you in advance for your attention to this matter,

Sincerely,

/s/
Hendrick W. Haynes

cc: USC 35 183, Secrecy Order, Rescinding Order

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF COMMERCE United States of America	UNITED STATES DEPARTMENT OF COMMERCE Patent and Trademark Office ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231

Serial No.	Filing Date
06/925,544	10/31/86

First Named Applicant	
HAYNES	H

Attorneys Docket No.

B-47

HENDRICK W. HAYNES
17427 195TH PLACE SE
RENTON, WA. 98059

Examiner
Brown, D
Art Unit
221
Date Mailed
02/21/90

R E S C I N D I N G O R D E R

The Secrecy Order dated December 18, 1987 prohibiting disclosure or publication of the subject matter of the above entitled application under the provisions of Title 35 United States Code (1952) 181-188 is hereby rescinded. Normal prosecution is continued and any suspension thereof

because of the secrecy order should now be removed. This rescinding order does not affect the provisions of any classified government contract or existing laws relating to espionage and national security.

/s/
(Sor Brooks Hunt)
Director, Special Laws
Administration

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
Washington, DC 20362-5101

IN REPLY REFER TO
5870
Ser 00L5/53-20KD
26 JAN 1990

Wolfpak Marine Corporation
Attn: Mr. Hendrick W. Haynes
P.O. Box 66152
Seattle, Washington 98166

Re: Secrecy order on Serial No. 925,544 filed 31 October 1986

Gentlemen:

I have been in contact with the ship silencing group of this Command concerning potential Government use of your invention. Because of severe cutbacks in defense funding

and resulting budgeting restrictions, the Navy is not able to fund development of this invention or to provide contracts to Wolfpak.

In the view of this Command, the secrecy order on the subject application is no longer considered necessary or appropriate, and we are recommending that the Patent and Trademark Office (PTO) remove the secrecy order. Unless some other agency of the Government has an independent interest (unknown to us) in the secrecy of this invention, we would expect you to hear from the PTO soon that the secrecy order will be removed.

Sincerely,

/s/
K. W. DOBYNS
Associate Counsel

(703) 602-7077

C-3

In District Court Plaintiff's
Admitted Trial Exhibit # 300

27 Dec. 1989

W O L F P A K tm
marine corporation

Marine Propulsion, Power
Generation, and
Hydraulics
P.O. Box 66152
Seattle, WA 98166
(206) 432-7728
FAX: (206) 432-7729

LICENSING AND REVIEW
U. S. Pat. & Trademark Off.
Washington, D.C. 20231
attn: Kenneth L. Cage
Group 220

Re:
SECRECY ORDER, U. S. Pat.
Application # 925,544 (filed
10/31/1986), mailed Pat. & TM
office 18 Dec. 1987; RENEWAL

Sir;

1) Please advise if the secrecy order, with its PERMIT A, is in

effect and if it will be renewed. The last renewal is dated 12/16/88. I will assume it is current until advised otherwise.

2) I am including a copy of our latest thruster advertising brochure. A revision of the jet auxiliary brochure is currently being done. What is offered is consistent with previous brochures, although system refinements are evident.

3) The method for transmitting sensitive information that we have on file is that which has been imposed by the Patent and Trademark office. This shall be maintained as the sole information path for sensitive information (no other method has been adressed to me by the USN).

Thanking you sincerely I am for your cooperation,

/s/
Hendrick W. Haynes

enc: 1989 thrstr brochures (2),
PTO form "COVER SHEET"

_C O V E R S H E E T_

THIS COVER SHEET IS TO INFORM YOU THAT THE ATTACHED MATERIAL CONTAINS INFORMATION RELATING TO A PATENT APPLICATION UNDER A "SECRECY ORDER" ISSUED BY THE UNITED STATES PATENT AND TRADEMARK OFFICE AFTER DETERMINATION BY A DEFENSE AGENCY THAT THE PUBLICATION OR DISCLOSURE THEREOF WOULD BE DETRIMENTAL TO THE NATIONAL SECURITY.

IN VIEW OF THE ABOVE DETERMINATION THIS MATERIAL AFFECTS THE NATIONAL DEFENSE WITHIN THE MEANING OF THE ESPIONAGE LAWS, TITLE 18 U.S.C., SECTION 793 AND 794. ITS TRANSMISSION OR REVELATION IN ANY MANNER TO AN UNAUTHORIZED PERSON IS FURTHER PROHIBITED BY THIS LAW.

IN FORWARDING TO THE PATENT AND TRADEMARK OFFICE ANY PAPERS, SUCH AS APPEAL BRIEFS OR AMENDMENTS, WHICH DISCLOSE SIGNIFICANT PORTIONS OF AN APPLICATION SUBJECT TO A SECRECY ORDER, CAUTION SHOULD BE USED TO PROTECT SUCH PAPERS FROM UNAUTHORIZED DISCLOSURE DURING TRANSMISSION.

IN ORDER TO AVOID UNNECESSARY HANDLING UPON RECEIPT, THESE PAPERS SHOULD BE TRANSMITTED TO THE COMMISSIONER OF PATENTS AND TRADEMARKS BY REGISTERED MAIL ENCLOSED IN AN INNER SEALED WRAPPER ON WHICH HAS BEEN INDICATED "PATENT AND TRADEMARK OFFICE SECRECY ORDER" OR "ATTENTION OF LICENSING AND REVIEW". PERSONAL DELIVERY SHOULD BE DIRECTLY TO LICENSING AND REVIEW, CRYSTAL PLAZA BLDG. 4, ROOM 10-C24, 2201 JEFF. DAVIS HWY, ARLINGTON, VA 22202.

_C O V E R S H E E T_

PTOL-326 (Rev. 7-82)
EXAMINER'S ACTION

[NOTE 03/06/1999: SEE Plaintiff's Appendix D-1 et seq.]

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF COMMERCE United States of America	UNITED STATES DEPARTMENT OF COMMERCE Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C.
20231

Serial No.	Filing Date
06/925,544	10/31/86

First Named Applicant
HAYNES H

Attorneys Docket No.

C-8

HENDRICK W. HAYNES
17427 195TH PLACE SE
RENTON, WA. 98059

Examiner
Brown, D
Art Unit
221
Paper Number
#16
Date Mailed
12/18/89

RENEWAL OF SECRECY ORDER
[Title 35, United States Code
(1952), Sections 181 - 188)

NOTICE: To the applicant(s), heirs of applicant(s), and any and all assignees, attorneys and agents, the designated principles.

The Armed Services Patent Advisory Board, Department of Defense (DOD), has notified the Commissioner of Patents and Trademarks that an affirmative determination has been made by a DOD agency, identified below, that the national interest requires renewal of the secrecy order. The secrecy order is therefore, renewed, effective for a period of __ONE YEAR__ from the date of this renewal notice.

The secrecy order may be renewed for additional periods of not more than one year upon notice by a government agency that the national interest so requires.

DOD AGENCY:

[ ] DARCOM

[X] NAVY

[ ] AIR FORCE

[ ] ASPAB

/s/
For Hilda M. Grimes
Director,
Special Laws Administration

PTOL-416 (Rev. 7-83)

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
Washington, DC 20362-5101

IN REPLY REFER TO
5870
Ser 00L5/114-20KD
17 FEB 1989

Wolfpak Marine Corporation
Attn: Mr. Hendrick W. Haynes
P.O. Box 66152
Seattle, Washington 98166

Re: Secrecy order on Serial No. 925,544 filed 31 October 1986

Gentlemen:

The Permit A which you were given with your initial secrecy order remains in effect.

You indicated that you were still awaiting the name of a U.S. Naval

Officer with whom you may consult with reference to security. In our letter of 8 April 1988, we indicated that Captain R. Harris (Code 55N, telephone number 202-746-1465) and those who work for him were the appropriate persons to consult. Since that time Captain Harris has left the Command, but the project officer in the same office is LCDR C. L. Louie.

I do not know how or if you could get a security clearance. If Code 55N cannot help in this regard, the security director of this Command is Mr. Ed Haines, Code 09T, telephone 202-692-3204. Security clearances would be within his cognizance.

Sincerely,

/s/
K. W. DOBYNS,
Associate Counsel for
Intellectual Property
(Patent Counsel)

Copy to: w/basic corr. (NOTAL)
SEA 55N
SEA 09T
PTO (Mr. Kenneth L. Cage)

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF COMMERCE
United States of America

UNITED STATES
DEPARTMENT OF
COMMERCE
Patent and
Trademark Office
ASSISTANT
SECRETARY AND
COMMISSIONER OF
PATENTS AND
TRADEMARKS
Washington, D.C.
20231

MAILED
FEB 13 1989
GROUP 220

Hendrick W. Haynes
WOLFPAK Marine Corporation
P.O. Box 66152
Seattle, WA 98166

Dear Mr. Haynes:

Your letter of January 21, 1989, has been forwarded the Department of Navy, Sea Systems Command, for consideration. Please contact Mr. Kenneth Dobyns (202-692-7810) should

you have additional questions.

The Patent and Trademark Office will notify you of the Navy's response as soon as this office receives their instructions.

Sincerely,

/s/
Kenneth L. Cage, Director
Special Laws Administration
and Designs

75 Years Stimulating America's Progress * 1913-1988

C-15

In District Court Plaintiff's
Admitted Trial Exhibit # 300

21 January 1989

W O L F P A K tm
marine corporation

Marine Propulsion, Power
Generation, and
Hydraulics
P.O. Box 66152
Seattle, WA 98166
(206) 432-7728
FAX: (206) 432-7729

LICENSING AND REVIEW
U. S. Pat. & Trademark Off.
Washington, D. C. 20231
attn: Kenneth L. Cage
Group 220

Re: SECRECY ORDER, U. S. Patent Application #925,544 (filed 10/31/1986), mailed Pat. & TM office 18 Dec. 1987; RENEWED (12/16/88)

Sir;

I have received your "RENEWED SECRECY ORDER" of 12/16/1988. Has

the renewed secrecy order been granted a PERMIT "A"?

Please also advise of the following:

a) a USN Officer whom I may consult with with reference to security (this is my second request).

b) How I may get clearance to examine the appropriateness of and get possible research access to the USN research facility at Bayview, Idaho (CWO3 W. T. Glover).

Point b) above would be with the idea that some seasonal specific research may be appropriate there late this year. Further, its very conveniently located relative to me (Seattle) and it is reputed to have a nice "shop" facility.

If the USN would rather me do nothing and leave the research to others of much greater talent than myself, please so advise. If it be convenient for the USN, I would very much like to have a part in the

development (if any) that may take place.

Thanking you sincerely I am,

/s/
Hendrick W. Haynes

enc: RENEWED SECRECY ORDER RECEIPT

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
Washington, DC 20362-5101

IN REPLY REFER TO
5870
Ser 00L5/196-KD13
8 APR 1988

Mr. Hendrick W. Haynes
Wolfpack Marine Corporation
P.O. Box 66152
Seattle, Washington 98166

Re: Secrecy order on Serial No. 925,544 filed 31 Oct 1986

Dear Mr. Haynes:

Responsive to your letter of 30 March 1988, you are correct in assuming that Captain William R. Harris and other Government employees who work with him are

among the officers and employees of the U.S. Government who are known to be concerned in an official capacity with the subject matter of your application, and with whom you may discuss the material contained in your application.

I assume that you have initiated or will initiate whatever discussions you wish to have with Captain Harris.

Sincerely,

/s/
K. W. DOBYNS
Associate Counsel for
Intellectual Property
(Patent Counsel)

[NOTE 03/03/1999: see CA FC #98-1458 Appellants App. Vol. 5, sec. Rear, pgs. 76 - 78 (Trial Transcript, Haynes - direct)]

C-20

In District Court Plaintiff's
Admitted Trial Exhibit # 300

30 March 1988

W O L F P A K tm
marine corporation

Marine Propulsion, Power
Generation, and
Hydraulics
P.O. Box 66152
Seattle, WA 98166
(206) 432-7728
FAX: (206) 432-7729

LICENSING AND REVIEW
U. S. Pat. & Trademark Off.
Washington, D. C. 20231
attn: Kenneth L. Cage
Group 220

Re: SECRECY ORDER, U. S. Patent Application #925,544 (filed 10/31/1986), SALE OF WOLFPAK TECHNOLOGY and CHANGE OF APPLICANTS RESIDENCE ADDRESS.

Sir;

1) Please note that the applicants residence and telephone number has changed to:

17427- 195th Place SE
Renton, Wa. 98058

(206) 432-7728

The POST OFFICE NUMBER (P.O. Box 66152, Seattle, Wa. 98166) is still a valid business mailing address.

2) The PTO and the USN is aware of USP 4,611,999 both from our telephone conversations and by reference in U.S. Patent Application #925,544. Wolfpak Marine has been manufacturing product under this patent for some time now, and the PTO has been mailed copies of the "usual" promotional material sent out to market these drives. It is assumed both the USN and the PTO see no conflict with the promotional material mailed and App. #925,544 [and its corresponding SECRECY ORDER (PERMIT "A")].

It is assumed that Wolfpak Marine may continue to engage in the manufacture of their bow thrusters and jet auxiliaries

for distribution internationally, and they may pursue all acts legal in commerce in connection therewith, including but not limited to the sale of rights and licensing under said issued patent.

3) I thank you very much for the clearification of the SECRECY ORDER under PERMIT "A", and for your introduction of me to Mr. K. W. Dobyns (00L5, NSSC).

Thanking you sincerely I am,

Faithfully,

/s/
Hendrick W. Haynes

cc: K. D.
[KENNETH DOBYNS]

C-23

In District Court Plaintiff's
Admitted Trial Exhibit # 300

30 March 1988

W O L F P A K tm
marine corporation

Marine Propulsion, Power
Generation, and
Hydraulics
P.O. Box 66152
Seattle, WA 98166
(206) 432-7728
FAX: (206) 432-7729

DEPARTMENT OF THE NAVY
attn: OOL5
Naval Sea Systems Command
Washington, D.C. 20362-5101

attn: K. W. DOBYNS
Director, Special Laws
Administration

Ref. 5870 Ser 0015/014-6KD

Re: Secrecy Order, U. S. Patent
Applic. 925,544, mailed Pat.
& TM Office 18 Dec. 1987; your
letter of 13 Jan. 1988

Sir;

Thank you for your letter of 13 January 1988. It was most helpful. Please understand I am not inside the USN system.

Your statement with reference to specific disclosure of information "to any other person specifically designated by the head of any department, independent agency or bureau of the Government or his duly authorized subordinate as a proper individual to receive a disclosure of the material covered by the patent application." refers to an individual or individuals being deemed "proper", e.g., having an authorized need to know with respect to said invention(s). Since the SECRECY ORDER and PERMIT "A" is controlled by your office and the PTO (your office being at the head of command), I assume contact controlling authority shall emit solely from your office. I assume at this time that Capt. Harris, and/or his designates have been given authority to have access to the subject information by your

office, and Capt. Harris will issue instructions with respect to further USN interest.

As you suggest, I will wait for the head of the SHIPS SILENCING GROUP (Capt. William Harris, [202] 746-1464) and/or his designates to get back to me. I look forward to cooperating with Captain Harris in any way that I can (if needed, me comming to Washington, D.C. and discussing the potential of a demonstration system which would use the resources of current USN suppliers and surplus (USN to supply air transportation, hotel expenses and meals)).

Thanking you sincerely I am,

Faithfully,

/s/
Hendrick W. Haynes

cc: K. C.

In District Court Plaintiff's
Admitted Trial Exhibit # 300

14 January 1988

W O L F P A K tm
marine corporation
P.O. Box 66152
Seattle, WA 98166
(206) 432-7728
FAX: (206) 432-7729

LICENSING AND REVIEW
U. S. Pat. & Trademark Off.
Washington, D. C. 20231
attn: Kenneth L. Cage
Group 220

Re: SECRECY ORDER, U. S. Patent Application #925,544 (filed 10/31/1986), mailed Pat. & TM office 18 Dec. 1987; RELEASE OF PATENT APPLICATION

Sir;

1) If these people are so [to] qualify to investigate USP App. #925,544 under the 18 Dec. 1987 Secrecy Order, please release to same. I assume that these

parties shall sign for copies of the document and shall treat the disclosure of the material with the secrecy and privity of interest practiced by the PTO:

Mr. Walt Rankin
Advanced System Development
Dept. of the Navy
NAVSEA Code 63D
Washington, D.C. 20326-5101
(202) 692-8530

Capt. William Harris
Ships Silencing Group
Dept. of the Navy
NAVSEA Code 55N
Washington, D.C. 20326
(202) 746-1464

2) Please advise both parties that if they wish a demonstration of the subject drive, please contact the following party:

Capt. George Parsons III
LEAHI CATAMARAN
P.O. Box 8193
Honolulu, Hawaii 96815
(808) 923-5617

Captain Parsons will gladly give the USN in Hawaii a tour of his 45' commercial vessel, and if their interest persists, they may arrange a charter with him for the purpose of investigating the drives sound properties (perhaps his vessel could motor over a sub in deep water for the purpose of recording passive sonar data?). The test will have some noise data limitations due to the motor control system.

3) The pump proposed in the original N86-49 proposal topic '"ANTI-COANDA EFFECT" MARINE WATER JET DRIVE FOR TACTICAL APPLICATION ON SUBMARINES', of 24 Jan. 1986, has been built with Wolfpak funds. If 2) above is acceptable, a phase 2 follow-on proposal could be done.

Sincerely,

/s/
Hendrick W. Haynes

enc: Leahi Catamaran card #25113134

[NOTE 3/03/1999: 2) above refers to applications reported to PTO in Application #450,369 office action dated and mailed 18 Jan.

1985, submitted and admitted as exhibit 330 (in CA FC #98-1458 Plaintiff's Appendix (P. App.) Vol. 2, sec. 5) during course of plaintiff's research in using his device per U. S. Patent application #50,199 (filed 20 June 1979), which issued as U. S. Patent (USP) #4,552,537. USP application #450,369, which was continuation-in-part of USP app. #50,199, issued as USP 4,611,999. 3) above refers to special water jet pump and a new type nozzle, based on design found in app. #'s 50,199 and 450,369, which were useful in creating demonstration system per USP application # 925,544 (subject to secrecy order). Id. P. App. Vol. 5, Rear, pgs. 88 - 96 (Trial "Haynes - cross"); also P. App. Vol. 4, pg.s 81 - 93, (Deposition).].

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF DEFENSE
United States of America

DEPARTMENT OF THE NAVY
Naval Sea Systems Command
Washington, DC 20362-5101

IN REPLY REFER TO
5870
Ser 00L5/014-6KD
13 JAN 1988

Mr. Hendrick W. Haynes
Wolfpack Marine Corporation
P.O. Box 66152
Seattle, Washington 98166

Re: Secrecy order on Serial
No. 925,544 filed 31
Oct 1986

Dear Mr. Haynes:

Your letter of 6 January 1988 requested specific instructions from the Department of Defense with regard to the above application.

If you are requesting that the

secrecy order be removed or modified, it will be necessary to petition the U.S. Patent and Trademark Office (PTO) for whatever you are requesting. The PTO will forward your petition to this office for our recommendation before reaching a decision. However, only the PTO has the authority to remove or modify the secrecy order.

If you are requesting clarification as to what you are allowed to do under the secrecy order as it now exists, we will attempt to provide that clarification. However, since the order came from the PTO, you may wish to assure that the PTO agrees with this clarification.

You were provided, we believe, with a Permit A with the secrecy order. This permit allows you to disclose the material contained in the application under secrecy order to any officer or employee of the United States Government who is known to be concerned in an official capacity with the subject matter of the application, provided that you take all reasonable safeguards to protect the information from

unauthorized disclosure. This is primarily a requirement that you notify the officer or employee of the existence of the secrecy order. There are also provisions allowing you to disclose the information to any other person specifically designated by the head of any department, independent agency or bureau of the Government or his duly authorized subordinate as a proper individual to receive a disclosure of the material covered by the patent application. There are other permissions granted in Permit A which you should read.

I told you earlier by telephone the name and telephone number of the head of the Ship Silencing code within the Naval Sea Systems Command. If anyone in this command is interested in actually using your invention, I suspect he would be able to locate them for you.

Please let me know if you have any specific questions not covered by this answer.

Sincerely,

/s/
K. W. DOBYNS
Associate Counsel for
Intellectual Property
(Patent Counsel)

Copy to:
PTO (Mr. Kenneth L. Cage)

C-34

In District Court Plaintiff's
Admitted Trial Exhibit # 300

7 January 1988

W O L F P A K tm
marine corporation

P.O. Box 66152
Seattle, WA 98166
(206) 432-7728
FAX: (206) 432-7729

LICENSING AND REVIEW
U. S. Patent and Trademark Office
Washington, D.C. 20231
attn: Kenneth L. Cage
Group 220

Re:
SECRECY ORDER, U. S. Pat. Application # 925,544 (filed 10/31/1986), mailed Pat. & TM office 18 Dec. 1987; RELEASE TO CONTINUE MARKETING THE WOLFPAK JET AUXILIARIES AND BOW THRUSTERS UNDER LITERATURE IT NOW CIRCULATES (by authority of Mr. Ken Dobyns, NAVSEA SYS. [202] 692-7077)

Sir;

1) Thank you for refering me to Mr. Ken Dobins. He, in a telephone conversation to me at about 10:30 am PST, has released me to continue marketing my product under brochures I currently use.

2) Per our conversation at about 2:00 pm PST, I am enclosing copies of the brochures I will be circulating, 1 ea. refering to the jet auxiliaries and 2 ea. refering to the bow thrusters. The CORONA-JETtm system is shown (but not explained) in function. As we discussed over the telephone, I was reserving this as a professional paper topic.

3) If there is any difficulty with the enclosures, please advise immediately. I do wish to be fully responsive to the wishes of the Patent and Trademark Office and the wishes of the Department of Defense.

4) Mr. Ken Dobins has given me the name of Captain William Harris of group 55N, Ships Silencing Office (202) 746-1464 as an individual through whom I may explore the possibility of experimenting with the subject invention on behalf of

the DOD. You have also concurred that I have permission to contact him under the secrecy order. With appreciation for this reference, I shall comply and report back to you the results.

Thanking you sincerely I am,

/s/
Hendrick W. Haynes

enc: 3

In District Court Plaintiff's
Admitted Trial Exhibit # 300

6 January 1988

W O L F P A K tm
marine corporation

P.O. Box 66152
Seattle, WA 98166
(206) 432-7728
FAX: (206) 432-7729

DEPARTMENT OF THE NAVY
attn: 00L5
Naval SLa Systems Command
Washington, D.C. 20362-5101

attn: SECRECY ORDER REVIEW, USP
Applic. #925,544
(10,31/86)

Re: release from SECRECY ORDER of 12/18/87, USP applic. #925,544 (Inventor unable to make a living as a result of such order).

Sir(s);

1) The INVENTOR, Hendrick W. Haynes, requests specific

INSTRUCTIONS FROM THE DEPARTMENT OF DEFENCE with reguard to the above application.

2) The inventor requests specific instructions with reference to the creation, making and selling of the WOLFPAK JET AUXILIARY SAILBOAT DRIVES and BOW THRUSTERS which are covered under U.S.P. numbers 4,611,999 (16 Sept. 1986) and 4,552,537 (12 Nov. 1985) which he has been making and selling since 1979. The CORONA-JETtm Anti-Coanda Effect Drive is the foundation point from which the above patent application steps beyond. The inventor makes his living EXCLUSIVELY from making and selling jet drives per the above issued patents.

3) If the DOD wishes to pursue the SECRECY ORDER, the inventor requests to be engaged in the development of his inventions covered under the SECRECY ORDER for the benefit of the NAVY. This will allow him again to make a living, and subject to the issuance of a patent by the honorable U. S. Patent and Trademark Office of the United

States and compliance with the above SECRECY ORDER, an ability to seek additional future compensation consistant with 35 USC 183.

Thanking you sincerely I am in advance for your rapid reply,

/s/
Hendrick W. Haynes

cc: Kenneth L. Cage

C-40

In District Court Plaintiff's
Admitted Trial Exhibit # 300

6 January 1988

W O L F P A K tm
marine corporation

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LICENSING AND REVIEW
U. S. Patent and Trademark Office
Washington, D.C. 20231
attn: Kenneth L. Cage
Group 220

Re: SECRECY ORDER, U. S. Patent Application #925,544 (filed 10/31/86), mailed Pat. & TM office 18 Dec. 1987 and our telephone conversation this date.

Sir;

1) Please find enclosed a copy of my letter this date to the USN. I have asked, per our telephone conversation this date, for

either a RELEASE from the SECRECY ORDER or to be engaged by the USN for the advancement of the subject invention(s) by the USN.

2) Under our telephone conversation regarding the subject SECRECY ORDER, I am unable to earn a livelyhood. I am not a Licensed Professional Engineer and therefor am prevented by state law in engaging in contract engineering work. I earn my living exclusively by designing and building specialty jet thrusters for small markets, and am allowed to do this as a manufacturer. I have design, development and prototyping facilities, as well as people I engage (besides myself) in this goal. I have a good tooling and machine shop, and contracting shops with which I do business, and a working inventory. All is stopped.

3) Your valuable and kind assistance is requested.

Thanking you sincerely I am,

/s/
Hendrick W. Haynes

In District Court Plaintiff's
Admitted Trial Exhibit # 300

1 January 1988

W O L F P A K tm
marine corporation

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Seattle, WA 98166
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FAX: (206) 432-7729

LICENSING AND REVIEW
U. S. Patent and Trademark Office
Washington, D.C. 20231
attn: Kenneth L. Cage
Group 220

Re: SECRECY ORDER, U. S. Patent Application #925,544 (filed 10/31/86), mailed Pat. & TM office 18 Dec. 1987.

Sir;

1) The HAYNES/CAGE letter to USN dated 29 Dec. 1987 (copy mailed your office on or about 30 Dec. 1987) contains errors to be changed as follows:

a) Page 1, line 46, change 10/31/86 to 18 Dec. 1987. 10/31/86 is the filing date of the application. What was meant was the date of the Secrecy Order.

b) Page 3, line 16, change PERSUANT to PURSUANT.

2) The SECRECY ORDER RECEIPT was signed in the city of RENTON, state of WASHINGTON. My appologies for the omission.

3) Please advise me whom within the USN has viewed the subject Patent Application and the reason they have in causing the SECRECY ORDER to be issued.

4) Please expedite your response on advisement on the needs of the USN with reference to the above patent application per my letter of 29 Dec. 1987. If the desired affect of the SECRECY ORDER is to curtail my interest in experimentation with stealth surface craft, torpedo and submarine technology, please so specify. I do not wish to be an intruder on the

business of the USN. If the effect of the SECRECY ORDER is to define an arena of technology around which the USN has a defense interest, and I shall have the privilege of taking part in the exploration of this discovery for the benefit of the United States defense system, please so advise. As mentioned in the 29 December 1987 communication (USN), I would like to be an officer in such a cause. Also, I run a small organization, with much of its work under proposals, contractors and vendors. My initial interest may be the retrofitting of surplused LANDING CRAFT, MINE SWEEPERS and TORPEDO, as the research systems would be disguised and readily incorporated and tested under peacetime "alert" conditions locally or in Hawaii.

Thanking you sincerely I am,

/s/
Hendrick W. Haynes

C-45

In District Court Plaintiff's
Admitted Trial Exhibit # 300

29 December 1987
3 Pages

W O L F P A K tm
marine corporation

P.O. Box 66152
Seattle, WA 98166
(206) 432-7728
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DEPARTMENT OF THE NAVY
attn: 00L5
Naval SLa Systems Command
Washington, D.C. 20362-5101
attn: Kenneth L. Cage
Director, Special Laws
Administration

Re: Secrecy Order, U. S. Pat. Applic. 925,544, mailed Pat. & T.M. Office 18 Dec. 1987.

Sir;

1) Wolfpak Marine built its first jet pump in 1974, with design work beginning in 1972. Its first

CORONA-JETtm main engine was installed and operated in a sailboat in 1979. Wolfpak Marine is in the exclusive business of manufacturing MARINE JET AUXILIARY DRIVES for displacement vessels and JET BOW THRUSTERS utilizing its anti-Coanda effect CORONA-JETtm principle. STEALTH was generated as a result of the CORONA-JETtm system research. We have thruster installations all over the world (no "stealth" drive has ever been promoted (accept to USN per above), or sold).

2) Please give us instructions as to what portions of the subject U. S. Patent Application are considered DETRIMENTAL TO NATIONAL SECURITY. It is assumed that since the propulsion pump and jet nozzle system having been patented, published and manufactured for a number of years, and with application and scaling of these devices not intruding upon the scope or character of the above U. S. Patent Application #925,544, that Wolfpak Marine can continue building and marketing same within the scope of marketing literature heretofor circulated world-wide.

3) Please forward me publications with reference to authorized security proceedures in compliance with the SECRECY ORDER of 10/31/86 [sic.], this including debriefing documents as required for Wolfpak project confidants.

4) Subject researcher requests a toll free telephone number and the name of an individual or individuals within the NAVY whom are authorized to have knowledge of this device, and whom are given charge of liaison and security compliance proceedures with reference to said invention.

5) Subject researcher requests a toll free telephone number and the name of an individual or individuals within the NAVY whom are authorized to have knowledge of this device, and whom questions may be directed in order to facilitate the furtherance of Wolfpak research per the above invention for the purposes and convenience of U. S. security and/or defense needs.

6) Wolfpak Marine is in the business of building jet thruster systems, and would like to engage in specialty research with reference

to the above concepts for the U. S. Navy. If the above invention does NOT meet the needs of the USN, the inventor assumes that SECRECY ORDER will no longer be necessary, and he shall be released to exploit the drive for arctic tugs and as a quiet drive for commercial fisherman. Although systems have not been put in place for this, the applicant was preparing research proposals to advance to CROWLEY MARITIME (Arctic Tug Service), as well as preparing a drive for introduction into the Bristol Bay fishing fleet in 1989. Although these systems are NOT defense related, this plan has now been stopped pending advisement by the USN. No materials a subject of #925,544 have been distributed.

7) Publication of the invention of U. S. Pat. Applic. 925,544 (filed 10/31/1986) was made as follows:

> Grant Application, Research, topic #86-49, mailed 24 Jan. 1986 to:

Commander
Naval Sea Systems
Command, USN
Attn: Code SEA-0035
SBIR prgm
Topic #N86-49
Washington, D.C. 20362

A cover letter was attached to the grant application development proposal pointing out that sections in connection with the stealth drive system were SECRET and not for open distribution. Copies of our standard product line brochure was enclosed to show that we ARE in the business of building propulsion pumps and WE DO have the capacity to execute such research. In this grant application it was pointed out that a system with application as a demonstrator of stealth concepts was operational, in a location near a major undersea warfare center, and available for testing. This vessel is still available, on location, for examination by the USN. Further, it has since been repowered with drives more closely modeling those which may be of interest to the USN (PMC controlled DC Electric) and

should be available for demonstration in a few weeks (Honolulu, Hawaii).

8) Please advise WOLFPAK MARINE of the status of their GRANT APPLICATION to research topic #N86-49, mailed 24 Jan. 1986. Although a DEBRIEFING WAS REQUESTED, none was given by the USN. If Pat. Application #925,544 is under a SECRECY ORDER, then the GRANT PROPOSAL shall carry the weight of that order and the USN file so placed, as well as the personnel and agencies so distributed to. They must be debriefed and carry the appropriate security clearance persuant to that order.

9) The development and structural history of the Wolfpak CORONA-JETtm drive is contained in the following publications (reference to other publication events is made therein).

U. S. Patent No. 4,611,999
(16 Sept. '86)
U. S. Patent No. 4,552,537
(12 Nov. '85)

10) Under grant application #N86-49, mailed 24 Jan. 1986, I requested permission to participate with the U.S. NAVY in creating experimental drives per the subject patent application. It is my belief that this research is for the good of the USN and in the interests of our country, although the outcome of such research is conjectural at this point. I am willing to be an officer of the Navy for this cause.

Thanking you sincerely I am,

Hendrick W. Haynes

cc: LICENSING AND REVIEW
U.S. Patent and Trademark Office
Washington, D. C. 20231
attn: Director
Group 220

C-52

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF COMMERCE
United States of America

UNITED STATES
DEPARTMENT OF
COMMERCE
Patent and
Trademark Office
ASSISTANT
SECRETARY AND
COMMISSIONER OF
PATENTS AND
TRADEMARKS
Washington, D.C.
20231

PAT. & T.M.
OFFICE
MAILED
DEC 18 1987
LICENSING
&
REVIEW

Serial No.: 925,544

Filed: 10/31/86

Applicant: HENDRICK W. HAYNES

C-53

Title: MARINE PROPULSION DEVICE WITH GASEOUS BOUNDARY LAYER FOR A THRUST JET FLOW STREAM EXHIBITING STEALTH AND ICE LUBRICATION PROPERTIES

Sponsoring Agency & Address:

Department of Navy
ATTN: 00L5
Naval Sla Systems Command
Washington, D.C.
20362-5101

S E C R E C Y O R D E R

(Title 35, United States Code, sections 181-188 (1952))

NOTICE: To the applicant(s) above named; his, her or their heirs; and any and all of the assignees, licensees, attorneys and agents, hereinafter designated principles:

You are hereby notified that the above-identified patent application has been found to contain subject

matter the unauthorized disclosure of which would be detrimental to the national security, and you are ordered to keep the subject matter secret (as required by 35 U.S.C. 181) and you are further ordered NOT TO PUBLISH OR DISCLOSE the subject matter to any person except as specifically authorized by the Commissioner of Patents and Trademarks.

Any other patent application already filed or hereafter filed in the U.S. or any foreign country which contains any significant part of the subject matter of the above-identified patent application falls within the scope of this Order. If such other patent application is not under a Secrecy Order imposed by the U.S. Patent and Trademark Office, it and the common subject matter immediately must be brought to the attention of the Director, Group 220, Attn: Licensing and Review, U. S. Patent and Trademark Office, Washington, D.C. 20231 as soon as possible.

Publication or disclosure of the subject matter of the above-

identified patent application, except as authorized herein or subsequently by the Commissioner of Patents and Trademarks, may subject the person publishing or disclosing the subject matter to the penalties of 35 U.S.C. 182, 185 and 186 (1952).

Since the disclosure of the subject matter of the above-identified application would be detrimental to the national security, the subject matter must be safe-guarded under conditions that will provide adequate protection and prevent access by unauthorized persons. When copies of the subject matter are no longer needed, they should be destroyed by any method that will prevent disclosure of the contents or reconstruction of the document.

This order should not be construed in any way to mean that the Government has adopted or contemplates adoption of the invention disclosed in this application and it is not any indication of the value of such invention.

C-56

/s/
Thomas H. Tarcza
for Kenneth L. Cage
Director, Special Laws
Administration

"Type III Order"
GROUP 220
(703) 557-2877
or 2894

C-57

In District Court Plaintiff's
Admitted Trial Exhibit # 300

DEPARTMENT OF COMMERCE
United States of America

UNITED STATES
DEPARTMENT OF
COMMERCE
Patent and
Trademark Office
Address only:
COMMISSIONER OF
PATENTS AND
TRADEMARKS
Washington, D.C.
20231

PAT. & T.M.
OFFICE
MAILED
DEC 18 1987
LICENSING
&
REVIEW

Serial No.: 925,544

Filed: 10/31/86

Applicant: HENDRICK W. HAYNES

Title: MARINE PROPULSION DEVICE WITH GASEOUS BOUNDARY LAYER FOR A THRUST JET FLOW STREAM EXHIBITING STEALTH AND ICE LUBRICATION PROPERTIES

P E R M I T A

An order of secrecy having been issued in the above-entitled application by the Commissioner of Patents and Trademarks, the principles as designated in said order are authorized to disclose the subject matter to any person of the classes hereinafter specified if such person is known to the principle disclosing to be concerned directly in an official capacity with the subject matter, provided that all reasonable safeguards are taken to otherwise protect the invention from unauthorized disclosure. The specified classes are:

(a) Any officer or employee of any department, independent agency, or bureau of the Government of the United States.

(b) Any person designated specifically by the head of any department, independent agency or bureau of the Government of the United

States, or by his duly authorized subordinate, as a proper individual to receive the disclosure of the above indicated application.

The principles under the secrecy order are further authorized to disclose the subject matter of this application to the minimum necessary number of persons of known loyalty and discretion, employed by or working with the principles or their licensees and whose duties involve cooperation in the development, manufacture or use of the subject matter by or for the Government of the United States, provided such persons are advised of the issuance of the secrecy order.

The provisions of this permit do not in any way lessen responsibility for the security of the subject matter as imposed by any Government contract or the provisions of the existing laws relating to espionage

and national security.

/s/
Thomas H. Tarcza
for Kenneth L. Cage
Director, Special Laws
Administration Group

FORM PTO-299 (REV. 4-75)

[N O T E : 03/06/1999
see App. D - 1 et seq.]

D-1

37 CFR; PATENTS

In District Court Plaintiff's Admitted Trial Exhibit # 490

37 Code of Federal Regulations (CFR) part 5.21 July 1, 1983:

G E N E R A L

[sec.] 5.21 Effect of modification, rescission or license.

Any consent, rescission or license under the provisions of this part does not lessen the responsibilities of the principles in respect to any Government contract or the requirements of any other Government agency.

[N O T E : 03/06/1999
S E E Plaintiff's App. C-9 and C-51 et seq.; 37 CFR 5.21 (1983) also as 37 CFR 5.32 (1991);
L A W S H E R E I N
R E P R E S E N T
I N C O M P L E T E
S E L E C T I O N F R O M
O R I G I N A L V O L U M E S,
A N D M A Y C O N T A I N
E R R O R S B Y T H E
P R O S E A U T H O R].

D-2

15 CFR; COMMERCE

In District Court Plaintiff's Admitted Trial Exhibit # 450; U. S Export Administration Regulations published August 1996 Plaintiff's Trial Exhibit # 460 (Export Administration Act of 1979, as amended, as Pg. 1 of Legal Authority, also see Appendix Vol. 3 of Haynes v. USA CA FC 98-1458; also in S. Ct. of US #97-8805; see Section 17 "EFFECT ON OTHER ACTS", pg. 114, (b) "Coordination of Controls", for "effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).", pg. 82 (c)(1) "Civil Penalties ..... export of defense articles and defense services under section 38 of the Arms Export Control Act [22 U.S.C. [sec.] 2778] may not exceed $100,000.", and page 100 et seq.). Footnotes omitted.

See also:

Section 325.1 Scope. ". . .protections from . . criminal and civil suits . . . anti-trust laws . . .".

Part 770 Export License General Policy; see especially section 770.1(3) ". .national security. .".

Section 771.1 Definitions; see especially "A general license".

Code of Federal Regulations

15

Commerce and Foreign Trade

SUBCHAPTER C -- EXPORT ADMINISTRATION REGULATIONS

15 Code of Federal Regulations (CFR) parts 300 to 799, Revised as of January 1, 1992:

[sec.] 787.1 Sanctions.

(a) Criminal -- (1) Violations of Export Administration Act -- (i) General.

Except as provided in paragraph (a)(1)(ii) of this section, whoever knowingly violates or conspires to or attempts to violate the Export Administration Act ("the Act") or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not

more than five times the value of the exports involved or $ 50,000, whichever is greater, or by imprisonment for not more than five years, or both.

(ii) W i l l f u l v i o l a t i o n s. (A) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, license issued thereunder, with knowledge that the exports involved will be used for the benefit of or that the destination or intended destination of the goods or technology involved is any controlled country or any country to which exports are controlled for foreign policy purposes, except in the case of an individual, shall be fined not more than five times the value of the export involved or $ 1,000,000 whichever is greater; and in the case of an individual, shall be fined not more than 10 years, or both.

(B) Any person who is issued a validated license under this Act for the export of any goods or technology to a controlled country and who, with the knowledge that such export is being used by such

controlled country for military or intellegence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined not more than five times the value of the exports involved or $ 1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $ 250,000, or imprisoned not more than five years, or both.

(C) Any person who possesses any goods or technology with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of the Act or any regulation, order, or license issued with respect to such control, or knowing or having reason to believe that the goods or technology would be so exported, shall, in the case of a violation of an export control imposed under section 5 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section and shall, in the case of a

violation of an export control imposed under section 6 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(i) of this section.

(D) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in paragraph (a)(1)(i) of this section, except that in the case of an evasion of an export control imposed under section 5 or 6 of the Act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section.

(2) Violations of False Statements Act. The submission of false or misleading information or the concealment of material facts, whether in connection with license applications, boycott reports, Shipper's Export Declarations, investigations, compliance proceedings, appeals, or otherwise,

is also punishable by a fine of not more than $ 10,000 or by imprisonment for not more than five years, or both, for each violation. (18 U.S.C. 1001).

(b) Administrative [1] -- (1) Denial of export privileges. Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is also subject to administrative action which may result in suspension, revocation, or denial of export privileges conferred under the Export Administration Act (see [sec.] 788.3 et seq.).

(2) Exclusion from practice. Whoever violates any law, regulation, order or license relating to export controls or restrictive trade practices and boycotts is further subject to administrative action which may result in exclusion from practice before the International Trade Administration (see [sec] 790.2(a)).

(3) Civil penalty. A civil penalty may be imposed for

each violation of the Export Administration Act or any regulation, order or license issued under the Act either in addition to, or instead of, any other liability or penalty which may be imposed. The civil penalty may not exceed $ 10,000 for each violation except that the civil penalty for each violation involving national security controls imposed under section 5 of the Act may not exceed $ 100,000. The payment of such penalty may be deferred or suspended, in whole or in part, for a period of time that may exceed one year. Deferral or suspension shall not operate as a bar in the collection of the penalty in the event that the conditions of the suspension or deferral are not fulfilled. When any person fails to pay a penalty imposed under this paragraph (b)(3), civil action for the recovery of the penalty may be brought in the name of the United States, in which action the court shall determine d e n o v o all issues necessary to establish liability. Once a penalty has been paid, no action for its refund may be maintained in any court [2].

15 CFR; COMMERCE

[sec.] 787.2 Causing, aiding, and abetting a violation.

No person may cause, or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the Export Administration Act or any regulation, order, or license issued under the Act.

[sec.] 787.3 Solicitation, attempt, and conspiracy.

(a) Solicitation and attempt. No person may do any act that solicits the commission of, or that constitutes an attempt to bring about, a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

(b) Conspiracy. No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

[sec.] 787.4 Acting with knowledge of a violation; possession with intent to export illegally.

(a) No person may order, buy, receive, conceil, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

(b) No person may possess any commodities or technical data, controlled for national security or foreign policy reasons under section 5 or 6 of the Act;

(1) With intent to export such commodities or technical data in violation of the Export Administration Act or any

regulation, order, license or other authorization under the Act, or

(2) Knowing or having reason to believe that the commodities or technical data would be so exported.

[sec.] 787.5 Misrepresentation and concealment of facts; evasion.

(a)(1) Misrepresentation and Concealment. No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Bureau of Export Administration, any Customs Office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official:

(i) In the course of an investigation or other action instituted under the authority of the Export Administration Act;

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any export

control document, as defined in 770.2, or restrictive trade practice or boycott request report, as defined in 769.6;

(iii) For the purpose of or in connection with effecting an export from the United States, or the reexport, trans-shipment, or diversion of any such export.

(2) Scope. Paragraph (a)(1) of this section applies to all representations, statements, and certifications made to, and material facts conceiled from, the Bureau of Export Administration and the U.S. Customs Service, or other agencies with respect to matters within the jurisdiction of these agencies under the statutes.

(3) Representations to be continuing in effect; notification. All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify, in writing, the Bureau of Export Administration, as well as any other cognizant agency(ies), of any change of any material fact or intention

from that previously represented, stated, or certified. Such notification shall be made immediately upon receipt of any information which would lead a reasonably prudent person to believe that a change of material fact or intention has occurred or may occur in the future.

(b) E v a s i o n. No person may engage in any transaction or take any other action, either independently or through any other person, with the intent to evade the provisions of the Act, or any regulation, order, license or other authorization issued under the Act.

[sec.] 787.6 Export, diversion, reexport, trans-shipment.

Except as specifically authorized by the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, tranship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions,

or conditions of any export control document, any prior representation, any form of notification of prohibition against such action, or any provision of the Export Administration Act or any regulation, order, or license issued under the Act.

[sec.] 787.7 Failure to comply with reporting requirements.

No person may fail or refuse to comply with reporting requirements in violation of the Export Administration Act or of any order, regulation or license issued under the Act. S e e, for example, 769.6, 772.9(e) and 779.6(b).

D-15
22 CFR; ITAR

Code of Federal Regulations

22

Foreign Relations

SUBCHAPTER M -- INTERNATIONAL TRAFFIC IN ARMS REGULATIONS "ITAR"

[NOTE 03/06/1999: See 37 CFR 5.21 (1983), 37 CFR 5.31 (1991) for effect of "rescission", "consent", "modification", and/or "license" on SECRECY ORDER. See 22 CFR 120.10(a)(3) for triggering of "ITAR" by invention SECRECY ORDER, and relationship to "service" (22 CFR 120.9), other technical data (22 CFR 120.10(a)(1)), and other articles (22 CFR 120.6), and the public (definition of "EXPORT" 22 CFR 120.17 et seq. and related definitions); and incremental releases required by State Department (22 CFR 120.1 through 22 CFR 120.4); also see 22 CFR 126.1 "PROHIBITED EXPORTS AND SALES TO CERTAIN COUNTRIES", AND 22 CFR 126.1(e):

D-16
22 CFR; ITAR

In Supreme Court of United States case #97-8805 Rule 33.1 Book, Haynes v. USA of 15 Apr. 1998, also as first appendix in CA FC #98-1458 (Haynes v. US), COMPARE copyright law in A-12 to A-15 with above documented matter. In Weisman v. Freeman (CA 2; 10 USPQ2d 1014), "originality requirement....being minimal or modest", confers 17 U.S.C. 106 (1977) rights "to do and to authorize", 17 U.S.C. 302(a) (1977) duration "life of author and fifty years after author's death"; while invention 35 U.S.C 154 (1984) is only "right to exclude others from making, using, or selling ..... term of seventeen years..." and 35 U.S.C. 103 (1984) requirement for "non-obvious subject matter", as well as loss of freedoms as a result of disclosure to the Government. Thusly, copyrighted writings enclose works of independent inventors (who may pay high patent fees; and be forced into ITAR obscurity); military, defense industry and academic institutionalists enjoy career path and retirement value with distinct growth advantages.]

D-17
22 CFR; ITAR

In District Court Plaintiff's Admitted Trial Exhibit # 480

22 Code of Federal Regulations (CFR) parts 1 to 299, Revised as of April 1, 1996:

[NOTES 03/06/1999: Supreme Court of U. S. A. case #97-8805 Rule 33.1 Book, Haynes v. USA of 15 Apr. 1998, attached by referrence hereon, refers to admitted matter as Plaintiff's appendix (P. app.) to CA FC case #98-1458 (Haynes v. US decided 11/06/98), is in appendix Volume 4, section Rear "ITAR" (abridged), see also Trial Transcript in D. app. Vol. 5, section Rear. Due to capability- of word processor, and [sec.] are used, or omitted].

[sec.] 120.1 General authorities and eligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) authorizes the President to control the export and import of defense articles and defense services. . . By virtue of delegations of authority by the Secretary of State,

these regulations are primarily administered by the Director of the Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State.

(b) Authorized Officials. All authorities conferred upon the Director of the Office of Defense Trade Controls by this subchapter may be exercised at any time by the Under Secretary of State for International Security Affairs, the Assistant Secretary of State for Politico-Military Affairs, or the Deputy Assistant Secretary of State for Politico-Military Affairs responsible for supervising the Office of Defense Trade Controls unless the Legal Advisor or the Assistant Legal Advisor for Politico-Military Affairs of the Department of State determines that any specific exercise of this authority under this subsection may be inappropiate .

(c) Eligibility. . . . . convicted of violating the criminal statutes in 120.27, who have been debarred pursuant to part 127 or 128 of this subchapter . . . are ineligible to contract . . .

license or other form of authorization . . .

[sec.] 120.2 Designation of defense articles and defense services.

The Arms Export Control Act (22 U.S.C. 2778(a) and 2794(7)) provides that the President shall designate the articles and services deemed to be defense articles and services for the purposes of this subchapter. The items so designated constitute the United States Munitions List and are specified in part 121 of this subchapter. Such designations are made by the Department of State with the concurrance of the Department of Defense. FOR A DETERMINATION ON WHETHER A PARTICULAR ITEM IS INCLUDED ON THE U.S. MUNITIONS LIST see 120.4(a). (emphasis mine).

[sec.] 120.6 Defense article.

D e f e n s e a r t i c l e means any item or technical data designated in 121.1 of this subchapter. The policy described

in 120.3 is applicable to designations of additional items. This includes technical data recorded or stored in any physical form, models, mock-ups or other items that reveal technical data directly relating to items designated in 121.1 of this subchapter. It does not include basic marketing information on function or purpose or general system descriptions.

[sec.] 120.9 Defense service.

(a) Defense service means:

(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; or

(2) The furnishing to foreign persons of any technical data controlled under this subchapter

(see 120.10), whether in the United States or abroad.
(3) [Reserved]

[sec.] 120.10 Technical data.

(a) T e c h n i c a l d a t a means, for purposes of this subchapter:

(1) Information, other than software as defined in 120.10(d), which is required for the design development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation.
(2) Classified information relating to defense articles and defense services;
(3) INFORMATION COVERED BY AN INVENTION SECRECY ORDER;(emphasis mine)
(4) Software as defined in 121.8(f) of this subchapter directly related to defense articles;

(5) This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

(b) [Reserved]

[sec.] 120.11 Public domain.

(a) Public domain means information which is generally accessible or available to the public:

(1) Through sales at newsstands and bookstores;

(2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

(3) Through second class mailing privileges granted by the U.S. Government;

(4) At libraries open to the public or from which the public can obtain documents;

(5) THROUGH PATENTS AVAILABLE AT ANY PATENT OFFICE; (emphasis mine)

(6) Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;

(7) THOUGH PUBLIC RELEASE (i.e., unlimited distribution) IN ANY FORM (e.g., not necessarily in published form) AFTER APPROVAL BY THE COGNIZANT U.S. GOVERNMENT DEPARTMENT OR AGENCY (see also 125.4(b)(13) of this subchapter); (emphasis mine)

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, AS DISTINGUISHED FROM RESEARCH THE RESULTS OF WHICH ARE RESTRICTED FOR proprietary reasons or SPECIFIC U.S. GOVERNMENT ACCESS AND DISSEMINATION CONTROLS. University

research will not be considered fundamental research if:

(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or

(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

(b) [Reserved]

[sec.] 120.12 Office of Defense Trade Controls.

Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State, Washington, DC 20522-0602.

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22 CFR; ITAR

[sec.] 120.27 (1996)
U. S. criminal statutes.

(a) For purposes of this subchapter, the phrase U.S. criminal statutes means:

(1) Section 38 of the Arms Export Control Act (22 U.S.C. 2778);

(2) Section 11 of the Export Administration Act of 1979 (50 U.S.C. app. 2410);

(3) Sections 793, 794, or 798 of title 18, United States Code (relating to espionage involving defense or classified information);

(4) Section 16 of the Trading with the Enemy Act (50 U.S.C. app. 16);

(5) Section 206 of the International Emergency Economic Powers Act (relating to foreign assets controls; 50 U.S.C. 1705);

(6) Section 30A of the Securities Exchange Act of 1934 (15 U.S.C. 78dd-1) or section 104 of the Foreign Corrupt Practices Act (15 U.S.C. 78dd-2);

(7) Chapter 105 of title 18, United States Code (relating to sabotage);

(8) Section 4(b) of the Internal Security Act of 1950 (relating to communication of classified information; 50 U.S.C. 783(b));

(9) Sections 57, 92, 101, 104, 222, 224, 225, or 226 of the Atomic Energy Act of 1954 (42 U.S.C. 2077, 2122, 2131, 2134, 2272, 2274, 2275, and 2276);

(10) Section 601 of the National Security Act of 1947 (relating to intelligence identities protection; 50 U.S.C. 421);

(11) Section 603(b) or (c) of the Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5113(b) and (c)); and

(12) Section 371 of title 18, United States Code (when it involves conspiracy to violate any of the above statutes).

(b) [Reserved]

[See 22 CFR 122.1(b) for EXEMPTIONS ACTIVITY. Note PURPOSE 22 CFR 122.1(c); (see 22 CFR 120.12, 22 CFR 120.1 - 22 CFR 120.4).]

PART 122 -- REGISTRATION OF MANUFACTURERS AND EXPORTERS

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22 CFR; ITAR

[sec.] 122.1 Registration Requirements.

(a) Any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services is required to register with the Office of Defense Trade Controls. Manufacturers who do not engage in exporting must nevertheless register.

(b) E x e m p t i o n s. Registration is not required for:

(1) Officers and employees of the United States Government acting in an official capacity.

(2) Persons whose pertinent business activity is confined to the production of unclassified technical data only.

(3) Persons all of whose manufacturing and export activities are licensed under the Atomic Energy Act of 1954, as amended.

(4) Persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.

(c) P u r p o s e. Registration is primarily a means to provide the U.S. Government with

necessary information on who is involved in certain manufacturing and export activities. Registration does not confer any export rights or privileges. It is generally a pre-condition to the issuance of any license or other approval under this subchapter.

[sec.] 122.2 Submission of registration statement.

(a) G e n e r a l. The Department of State Form DSP-9 (Registration Statement) and the transmittal letter required by paragraph (b) of this section must be submitted by an intended registrant with a payment by a check or money order payable to the Department of State of one of the fees prescribed in 122.3(a) of this subchapter. The Registration Statement and transmittal letter must be signed by a senior officer who has been empowered by the intended registrant to sign such documents. The intended registrant shall also submit documentation that demonstrates that it is incorporated or otherwise authorized to do

business in the United States. The Office of Defense Trade Controls will return to the sender any Registration Statement that is incomplete, or that is not accompanied by the required letter or payment of the proper registration fee.

(b) Transmittal letter. A letter of transmittal, signed by an authorized senior officer of the intended registrant, shall accompany each Registration Statement.

(1) The letter shall state whether the intended registrant, chief executive officer, president, vice-presidents, other senior officers or officials (e.g. comptroller, treasurer, general counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in 120.27 of this subchapter; or

(ii) Is ineligible to contract with, or receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) The letter shall also declare whether the intended registrant is owned or controlled by foreign persons (as defined in 120.16 of this subchapter). If the intended registrant is owned or controlled by foreign persons, the letter shall also state whether the intended registrant is incorporated or otherwise authorized to engage in business in the United States.

(c) D e f i n i t i o n. For purposes of this section, o w n e r s h i p means that more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons. C o n t r o l means that one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities if no U.S. persons control an equal or larger percentage. The standards for control specified in 22 CFR 60.2(c) also provide guidance in determining whether control in fact exists.

22 C.F.R. Part 126 -- GENERAL POLICIES AND PROVISIONS

[sec.] 126.1 Prohibited exports and sales to certain countries.

(a) G e n e r a l. It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Armenia. Azerbaijan, Belarus, Cuba, Georgia, Iran, Iraq, Kazakhstan, Kyrgyzstan, Libya, Moldova, Mongolia, North Korea, Russia, Syria, Tajikistan, Turkmenistan, Ukraine, Uzbekistan and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (e.g., Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan, the former Yugoslavia, and Zaire) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Comprehensive arms embargoes are normally the subject of a State Department notice published in the

F E D E R A L R E G I S T E R .
The exemptions provided in the regulations in this subchapter, except [sections] 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries or areas. With regard to [sec] 123.27 the exemption does not apply with respect to articles originating in or for export to countries prohibited by a United Nations Security Council Resolution or to which the export (or for which the issuance of a license for the export) would be prohibited by a U.S. statute (e.g. by Section 40 of the Arms Export Control Act, 22 U.S.C. 2780, to countries that have been determined to have repeatedly provided support for acts of international terrorism, i.e. Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria).

(b) S h i p m e n t s.
A defense article licensed for export under this subchapter may not be shipped on a vessel, aircraft or other means of conveyance which is owned or operated by, or leased to or from, any of the proscribed countries or areas.

(c) Exports and sales prohibited by United Nations Security Council embargoes. Whenever the United Nations Security Council mandates an arms embargo, all transactions which are prohibited by the embargo and which involve U.S. persons anywhere, or any person in the United States, and defense articles and services of a type enumerated on the United States Munitions List (22 CFR part 121), irrespective of origin, are prohibited under the ITAR for the duration of the embargo, unless the Department of State publishes a notice in the FEDERAL REGISTER specifying different measures. This would include, but is not limited to, transactions involving trade by U.S. persons who are located inside or outside the United States in defense articles and services of U.S. or foreign origin which are located inside or outside of the United States.

(e) Proposed sales. No sale or transfer and no proposal to sell or transfer any defense articles, defense services or

technical data subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Office of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases. Any person who knows or has reason to know of such a proposed or actual sale, or transfer, of such articles, services or data must immediately inform the Office of Defense Trade Controls.

[sec.] 126.3 Exceptions

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Director, Office of Defense Trade Controls may make an exception to the provisions of this subchapter.

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27 CFR; A T F

In District Court Plaintiff's Admitted Trial Exhibit # P-15 (pgs. 613-617, 619, 623, 624, 912, 921, 922, 939-941), also Exhibit 480 (as 27 CFR set, revised April 1, 1996)

Code of Federal Regulations

27

Bureau of Alcohol, Tobacco, and Firearms, Treasury

PART 47 -- IMPORTATION OF ARMS, AMMUNITION AND IMPLEMENTS OF WAR

Subpart A -- Scope

[sec.] 47.1 General.

The regulations in this part relate to that portion of Section 38, Arms Export Control Act of 1976, as ammended, which is concerned with the importation of arms, ammunition and implements of war. This part contains the U.S. Munitions Import

List and includes procedural and administrative requirements and provisions relating to registration of importers, permits, articles in transit, import certification, delivery verification, import restrictions applicable to certain countries, exemptions, U.S. military firearms or ammunition, penalties, seizures, and forfeitures. All designations and changes in designation of articles subject to import control under Section 414 of the Mutual Security Act of 1954, as amended, have the concurrence of the Secretary of State and the Secretary of Defense.

[sec.] 47.2 Relation to other laws and regulations.

(a) All of those items on the U.S. Munitions Import List (see 47.21) which are "firearms" or "ammunition" as defined in 18 U.S.C. 921(a) are subject to the interstate and foreign commerce controls contained in Chapter 44 of Title 18 U.S.C. and 27 CFR Part 178 and if they are "firearms" within the definition set out in 26 U.S.C. 5845(a) are also subject to the

provisions of 27 CFR Part 179. Any person engaged in the business of importing firearms or ammunition as defined in 18 U.S.C. 921(a) must obtain a licence under the provisions of 27 CFR Part 178, and if he imports firearms which fall within the definition of 26 U.S.C.5845(a) must also register and pay special tax pursuant to the provisions of 27 CFR Part 179. Such licensing, registration and special tax requirements are in addition to registration under Subpart D of this part.

(b) The permit procedures of Subpart E of this part are applicable to all importations of articles on the U.S. Munitions Import List not subject to controls under 27 CFR Part 178 or 27 CFR Part 179. U.S. Munitions Import List articles subject to controls under 27 CFR Part 178 or 27 CFR Part 179 are subject to the import permit procedures of those regulations if imported into the United States (within the meaning of 27 CFR Parts 178 and 179).

(c) Articles on the U.S. Munitions Import List imported for the United States or any State or political subdivision thereof are

exempt from the import controls of 27 CFR Part 178 but are NOT EXEMPT from control under Section 38, Arms Export Control Act of 1976, UNLESS IMPORTED BY THE UNITED STATES OR ANY AGENCY THEREOF. All such importations not imported by the United States or any agency thereof shall be subject to the import permit procedures of Subpart E of this part. (emphasis mine).

Subpart B -- Definitions

[sec.] 47.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascibed in this section . . . . .

A T F o f f i c e r.
An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part.

A r t i c l e. Any of the arms, ammunition, and implements of war enumerated in the U.S. Munitions Import List.

D e f e n s e a r t i c l e s. Any item designated in 47.21 or 47.22. This term includes models, mockups, and other such items which reveal technical data directly related to 47.21 or 47.22. For purposes of Category XXII, any item enumerated on the U.S. Munitions List (22 CFR Part 121).

D e f e n s e s e r v i c e s.
(a) The furnishing of assistance, including training, to foreign persons in the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles, whether in the United States or abroad; or
(b) The furnishing to foreign persons of any technical data, whether in the United States or abroad.

27 CFR; A T F

D i r e c t o r. The Director, Bureau of Alcohol, Tabacco and Firearms, the Department of the Treasury, Washington, DC 20226.

Subpart C -- The U.S. Munitions Import List

[sec.] 47.21 The U.S. Munitions Import List.

The U.S. Munitions List compiled by the Department of State, Office of Munitions Control, and published at 22 CFR 121.1, with deletions indicated, has been adopted as an enumeration of the defense articles subject to controls under this part. The expurgated list, set out below, shall, for the purposes of this part, be known as the U.S. Munitions Import List: . . . .

CATEGORY VI -- VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT . . . .

CATEGORY XX -- SUBMERSIBLE VESSELS, OCEANOGRAPHIC AND ASSOCIATED EQUIPMENT . . . .

CATEGORY XXI -- MISCELLANEOUS ARTICLES

Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director, Office of Munitions Control, Department of State, with the concurrence of the Department of Defense.

[sec.] 47.22 Forgings, castings, and machined bodies.

Articles on the U.S. Munitions Import List include articles in a partially completed state (such as forgings, castings, extrusions, and machined bodies) which have reached a stage in manufacture where they

are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions Import List, (including components, accessories, attachments and parts) then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this part, except for such items as are in normal commercial use.

Subpart D -- Registration

[sec.] 47.31 Registration Requirement.

Persons engaged in the business, in the United States, of importing articles enumerated on the U.S. Munitions Import List must register with the director.

Subpart F -- Miscellaneous Provisions

[sec.] 47.53 Exemptions

(a) The provisions of this part are not applicable to:

(1) Importations by the United States or any agency thereof;

(2) Importation of components for items being manufactured under contract for the Department of Defense; or

(3) Importation of articles (other than those which would be "firearms" as defined in 18 U.S.C. 921(a)(3) manufactured in foreign countries for persons in the United States pursuant to Department of State approval.

(b) Any person seeking to import articles on the U.S. Munitions Import List as exempt under paragraph (a)(2) or (3) of this section may obtain release of such articles from Customs custody by submitting, to the Customs officer with authority to release, a statement claiming the exemption accompanied by satisfactory proof of eligibility. Such proof may be in the form of a letter from the Department of Defense or State, as the case may be, confirming that the conditions of the exemption are met.

[sec.] 47.54 Administrative procedures inapplicable.

The functions conferred under section 38, Arms Export Control Act of 1976, as amended, are excluded from the operation of Chapter 5, Title 5, United States Code, with respect to Rule Making and Adjudication, 5 U.S.C. 553 and 554.

[sec.] 47.55 Departments of State and Defense consulted.

The administration of the provisions of this part will be subject to the guidance of the Secretaries of State and Defense on matters affecting world peace and the external security and foreign policy of the United States.

[sec.] 47.56 Authority of Customs officers.

(a) Officers of the U.S. Customs Service are authorized to take appropriate action to assure compliance with this part and with 27 CFR Parts 178 and 179 as to the

importation or attempted importation of articles on the U.S. Munitions Import List, whether or not authorized by permit.

(b) Upon the presentation to him of a permit or written approval authorizing importation of articles on the U.S. Munitions Import List, the Customs officer who has authority to release same may require, in addition to such documents as may be required by Customs regulations, the production of other relevant documents relating to the proposed importation, including, but not limited to, invoices, orders, packing lists, shipping documents, correspondence, and instructions.

Subpart G -- Penalties, Seizures and Forfeitures

[sec.] 47.61 Unlawful importation.

Any person who willfully:

(a) Imports articles on the U.S. Munitions Import List without a permit:

(b) Engages in the business of importing articles on the U.S. Munitions Import List without registering under this part; or

(c) Otherwise violates any provisions of this part;

Shall upon conviction be fined not more than $ 1,000,000 or imprisoned not more than 10 years, or both.

[sec.] 47.62 False statements or conceilment of facts.

Any person who willfully, in a registration or permit application, makes any untrue statement of a material fact or fails to state a material fact required to be stated therein or necessary to make statements therein not misleading, shall upon conviction be fined not more than $ 1,000,000, or imprisoned not more than 10 years, or both.

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27 CFR; A T F

[sec.] 47.63 Seizure and forfeiture.

Whoever knowingly imports into the United States contrary to law any article on the U.S. Munitions Import List; or receives, conceils, buys, sells, or in any manner facilitates its transportation, concealment, or sale after importation, knowing the same to have been imported contrary to law, shall be fined not more than $ 10,000 or imprisoned not more than 5 years, or both; and the merchandise so imported, or the value thereof shall be forfeited to the United States.

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37 CFR; Patents

In District Court Plaintiff's Admitted Trial Exhibit # 490

37 Code of Federal Regulations (CFR) part 5.21 July 1, 1983:

G E N E R A L

[sec.] 5.21 Effect of modification, rescission or license.

Any consent, rescission or license under the provisions of this part does not lessen the responsibilities of the principles in respect to any Government contract or the requirements of any other Government agency.

[N O T E : 03/06/1999
S E E Plaintiff's App. C - 5 1 et seq.; Also Plaintiff's App. C - 9; 37 CFR 5.21 (1983) as 37 CFR 5.32 (1991)]

D-49
10 USC; Military

In District Court Plaintiff's Admitted Trial Exhibit # 190 (from plaintiff's District Court 20 Nov. 1996 submitted paper "Secrecy Order" Laws; additional laws quoted for convenience. See Appendix C-34 to C-60; B-48, C-4, C-9, C-52 -> C-60)

United States Code

Title 10

Armed Forces

CHAPTER 15 -- INSURRECTION

from Title 10 United States Code Annotated (USCA) sections 1 to 835, copyright 1983 by West Publishing Co.:

[sec.] 331 Federal aid for State governments

Whenever there is an insurrection in any State against its government, the President may, upon the request

of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.

[sec.] 332 Use of military and armed forces to enforce Federal authority

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impractical to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

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10 USC; Military

[sec.] 333 Interference with State and Federal law

The President, by using the militia or armed forces, or both, or by any other means, shall take such measures as he considers necessary to supress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it --

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

CHAPTER 17 -- ARMING OF AMERICAN VESSELS

from Title 10 United States Code Annotated (USCA) sections 1 to 835, copyright 1983 by West Publishing Co.:

[sec.] 351. During war or threat to national security

(a) The President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States.

(b) This section applies during a war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests.

(c) Section 16 of the Act of March 4, 1909 (22 U.S.C. 463) does not apply to vessels armed under this section.

CHAPTER 18 -- MILITARY SUPPORT FOR CIVILIAN LAW ENFORCEMENT AGENCIES

[sec.] 371. Use of information collected during military operations

(a) The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any

information collected during the normal course of military training or operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

(b) The needs of civilian law enforcement officials for information shall, to the maximum extent practicable, be taken into account in the planning and execution of military training or operations.

(c) The Secretary of Defense shall ensure, to the extent consistent with national security, that intelligence information held by the Department of Defense and relevant to drug interdiction or other civilian law enforcement matters is provided promptly to appropriate civilian law enforcement officials.
(As amended Pub.L. 100-456, Div.A, Title XI, sec. 1104(a), Sept. 29, 1988, 102 Stat. 2043.)

[sec.] 372. Use of military equipment and facilities

The Secretary of Defense may, in accordance with other applicable law, make available any equipment (including associated supplies or spare parts), base facility, or research facility of the Department of Defense to any Federal, State, or local civilian law enforcement official for law enforcement purposes.
(As amended Pub.L. 100-456, Div. A, Title XI, sec. 1104(a), Sept. 29, 1988, 102 Stat. 2043.)

[sec.] 373. Training and advising civilian law enforcement officials

The Secretary of Defense may, in accordance with other applicable law, make Department of Defense personnel available --

(1) to train Federal, State, and local law enforcement officials in the operation and maintenance of equipment, including equipment made available under section 372 of this title; and

(2) to provide such law enforcement officials with expert advise relevant to the purposes of this chapter.

(As amended Pub.L. 99-145, Title XIV, sec. 1423(a), Nov. 8, 1985, 99 Stat. 752; Pub.L. 100-456, Div.A, Title XI, sec. 1104(a), Sept. 29, 1988, 102 Stat. 2043.)

[see also 10 USC 374 Assistance by Department of Defense personnel]

[sec.] 375. Restriction on direct participation by military personnel

The Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized

by law.
(As amended Pub.L. 100-456, Div. A, Title XI, sec. 1104(a), Sept. 29, 1988, 102 Stat. 2045; Pub.L. 101-189, Div. A., Title XII, sec. 1211, Nov. 29, 1989, 103 Stat. 1567.)

CHAPTER 35 -- TEMPORARY APPOINTMENTS IN OFFICER GRADES

[sec.] 603. Appointments in time of war or national emergency

(a) In time of war, or of national emergency declared by the Congress or the President after November 30, 1980, the President may appoint any qualified person (whether or not already a member of the armed forces) to any officer grade in the Army, Navy, Air Force, or Marine Corps, except that appointments under this section may not be made in grades above major general or rear admiral. Appointments under this section shall be made by the President alone, except that an

appointment in the grade warrant officer, W-1, shall be made by warrant by the Secretary concerned.

(b) Any appointment under this section is a temporary appointment and may be vacated by the President at any time.

(c)(1) Any person receiving an original appointment under this section is entitled to service credit as authorized under section 533 of this title.

(2) An appointment under this section of a person who is not on active duty becomes effective when that person begins active duty under that appointment.

(d) An appointment under this section does not change the permanent status of a member of the armed forces so appointed. A member who is appointed under this section shall not incur any reduction in the pay and allowances to which the member was entitled, by virtue of his permanent status, at the time of his appointment under this section.

(e)(1) An officer who receives an appointment to a higher grade under this section is considered to have accepted such appointment on the date of the order announcing the appointment unless he expressly declines the appointment.

(2) An officer who has served continuously since he subscribed to the oath of office prescribed in section 3331 of title 5 is not required to take a new oath upon appointment to a higher grade under this section.

(f) Unless sooner terminated, an appointment under this section terminates on the earliest of the following --

(1) The second anniversary of the appointment.

(2) The end of the six-month period beginning on the last day of the war or national emergency during which the appointment was made.

(3) The date the person appointed is released from active duty.

(As amended Pub.L. 101-189, Div. A, Title VI, sec. 653(a)(2), Nov. 29, 1989, 103 Stat. 1462; Pub.L. 102-190, Div. A, Title XI, sections 1113(b), (d)(1)(A), Dec. 5, 1991, 105 Stat. 1502.)

CHAPTER 67 -- RETIREMENT PAY FOR NON-REGULAR SERVICE

[sec.] 1333. Computation of years of service in computing retired pay

For the purpose of computing the retired pay of a person under this chapter, his years of service and any fraction of such a year are computed by adding --

(1) his days of active service;

(2) his days of full-time service under sections 316, 502, 503, 504 and 505 of

title 32 while performing annual training duty or while attending a prescribed course of instruction at a school designated as a service school by law or by the Secretary concerned;

(3) one day for each point credited to him under clause (B) or (C) of section 1332(a)(2) of this title, but not more than 60 days in any one year; and

(4) 50 days for each year before July 1, 1949, and proportionately for each fraction of a year, of service (other than active service) in a reserve component of an armed force, in the Army or the Air Force without component, or in any category covered by section 1332(a)(1) of this title except a regular component;

and by dividing the sum of that addition by 360.
(Aug. 10, 1956, c. 1041, 70A Stat.

103; Sept. 2, 1958, Pub.L. 85-861, sec. 33(a)(10), 72 Stat. 1565.)

T I T L E 1 0

A R M E D F O R C E S

Subtitle C -- Navy and Marine Corps

CHAPTER 503. -- DEPARTMENT OF THE NAVY

[sec.] 5011. Organization

The Department of the Navy is separately organized under the Secretary of the Navy. It operates under the authority, direction, and control of the Secretary of Defense. (As amended Sept. 7, 1962, Pub.L. 87-651, Title II, sec. 212, 76 Stat. 524; Oct. 1, 1986, Pub.L. 99-433, Title V, sec. 511(b)(2), (c)(1), 100 Stat. 1043.)

[sec.] 5012. Department of the Navy: Seal

The Secretary of the Navy shall have a seal for the Department of the Navy. The design of the seal must be approved by the President. Judicial notice shall be taken of the seal.
(Added Pub. L. 99-433, Title V, sec. 511(c)(2), Oct. 1, 1986, 100 Stat. 1043. A prior section 5012 was redesignated section 5062 by Pub.L. 99-433.)

[sec.] 5013. Secretary of the Navy

(a)(1) There is a Secretary of the Navy, appointed from civilian life by the President, by and with the advise and consent of the Senate. The Secretary is the head of the Department of the Navy.

(2) A person may not be appointed as Secretary of the Navy within five years after relief from active duty as a commissioned officer of a regular component of an armed force.

(b) Subject to the authority, direction, and control of the Secretary of Defense and subject to the provisions of chapter 6 of this title, the Secretary of the Navy is responsible for, and has the authority necessary to conduct, all affairs of the Department of the Navy, including the following functions:

(1) Recruiting.

(2) Organizing.

(3) Supplying.

(4) Equipping (including research and development).

(5) Training.

(6) Servicing.

(7) Mobilizing.

(8) Demobilizing.

(9) Administering (including the morale and welfare of personnel).

(10) Maintaining.

(11) The construction, outfitting, and repair of military equipment.

(12) The construction, maintenance, and repair of buildings, structures, and utilties and the aquisition of real property and interests in real property necessary to carry out the responsibilities specified in this section.

(c) Subject to the authority, direction, and control of the Secretary of Defense, the Secretary of the Navy is also responsible to the Secretary of Defense for --

(1) the functioning and efficiency of the Department of the Navy;

(2) the formulation of policies and programs by the Department of the Navy that are fully consistent with national security objectives and policies established by the President or the Secretary of Defense;

(3) the effective and timely implementation of policy, program, and budget decisions and instructions of the President or the Secretary of Defense relating to the functions of the Department of the Navy;

(4) carrying out the functions of the Department of the Navy so as to fulfill (to the maximum extent practicable) the current and future operational requirements of the unified and specified combatant commands;

(5) effective cooperation and coordination between the Department of the Navy and the other military departments and agencies of the Department of Defense to provide for more effective, efficient, and economical administration and to eliminate duplication;

(6) the presentation and justification of the positions of the Department of the Navy on the plans, programs, and policies of the Department of Defense; and

(7) the effective supervision and control of the intelligence activities of the Department of the Navy.

(d) The Secretary of the Navy is also responsible for such other activities as may be prescribed by law or by the President or Secretary of Defense.

(e) After first informing the Secretary of Defense, the Secretary of the Navy may make such recommendations to Congress relating to the Department of Defense as he considers appropriate.

(f) The Secretary of the Navy may assign such of his functions, powers, and duties as he considers appropriate to the Under Secretary of the Navy and to the Assistant Secretaries of the Navy. Officers of the Navy and the Marine Corps shall, as directed by the Secretary, report on any matter to the Secretary, the Under Secretary, or any Assistant Secretary.

(g) The Secretary of the Navy may --

(1) assign, detail, and prescribe the duties of members of the Navy and Marine Corps and civilian personnel of the Department of the Navy;

(2) change the title of any officer or activity of the Department of the Navy not prescribed by law; and

(3) prescribe regulations to carry out his functions, powers, and duties under this title.

(Added Pub.L. 99-433, Title V, sec. 511(c)(2), Oct. 1, 1986, 100 Stat. 1043, and amended Pub.L. 99-661, Div. A, Title V, sec. 534, Nov. 14, 1986, 100 Stat. 3873.)

[sec.] 5022. Office of Naval Research: duties

(a) There is in the Office of the Secretary of the Navy an Office of Naval Research.

(b) The Office of Naval Research shall perform such duties as the Secretary of the Navy prescribes relating to --

(1) the encouragement, promotion, planning, initiation, and coordination of naval

research;

(2) the conduct of naval research in augmentation of and in conjunction with the research and development conducted by the bureaus and other agencies and offices of the Department of the Navy; and

(3) the supervision, administration, and control of activities with or for the Department relating to patents, inventions, trademarks, copyrights, and royalty payments, and matters connected therewith.

(c) Sufficient information relative to estimates of appropriations for research by the several bureaus and offices shall be furnished to the Office of Naval Research to assist it in coordinating naval research and carrying out its other duties.

(d) The Office of Naval Research shall perform its duties under the authority of the Secretary, and its orders are considered as coming from the Secretary.

(Aug. 10, 1956, c. 1041. 70A Stat. 291, sec. 5151, renumbered sec. 5022, Oct. 1, 1986, Pub.L. 99-433, Title V, sec. 511(d), 100 Stat. 1048, and amended Pub.L. 101-510, Div. A., Title IX, sec. 910(b)(1), Nov. 5, 1990, 104 Stat. 1625.)

(sec.) 5023. Office of Naval Research: appropriations; time limit

(a) Sums appropriated for the Office of Naval Research may be used to pay the costs of performing its duties under section 5022 of this title including the cost of --

(1) administration;

(2) conduct of research and development work in Government facilities; and

(3) conduct of research and development work under contracts with individuals, corporations, and educational or scientific institutions.

(b) Sums appropriated for the

purposes of this section, if obligated during the fiscal year for which appropriated, remain available for expenditure for four years after the end of that fiscal year. Any balance not spent after that four-year period shall be carried to the surplus fund and covered into the Treasury. (Aug. 10, 1956, c. 1041, 70A Stat. 291, sec. 5152, renumbered sec. 5023 and amended Oct. 1, 1986, Pub. L. 99-433, Title V, sections 511(d), 514(c)(2), 100 Stat. 1048, 1055.)

[sec.] 5024 Naval Research Advisory Committee

(a) The Secretary of the Navy may appoint a Naval Research Advisory Committee consisting of not more than 15 civilians preeminent in the fields of science, research, and development work. Each member serves for such term as the Secretary specifies.

(b) The Committee shall meet at such times as the Secretary specifies to consult with and advise the Chief of Naval Operations and the Chief of Naval Research.

(c) No law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, the payment or receipt of compensation in connection with any claim, proceeding, or matter involving the United States applies to members of the Committee solely by reason of their membership on the Committee.

[(d) Redesignated (c)]

(Aug. 10, 1956, c. 1041, 70A Stat. 291, sec. 5153, Oct. 14, 1981, Pub. L. 97-60, Title II, sec. 205, 95 Stat. 1007; renumbered sec. 5024, and amended Oct. 1, 1986, Pub.L. 99-433, Title V, sections 511(d), 514(d)(2), 100 Stat. 1048, 1055.)

CHAPTER 643. -- CIVILIAN EMPLOYEES

[sec.] 7473. Employment of aliens

Laws prohibiting payment of compensation to a person who is not a citizen of the United States do not apply to a person whose employment by the Department of the Navy is determined by the Secretary of the Navy to be necessary to obtain for the armed forces the benefits of the special technical or scientific knowledge or experience possessed by that person and not readily obtainable from a citizen. Aug. 10, 1956, c. 1041, 70A Stat. 462.

[NOTE: Petitioner in HAYNES v. US (CA FC 98-1458) is U.S. citizen]

CHAPTER 645. -- PROCUREMENT OF SUPPLIES AND SERVICES

[sec.] 7521. Progress payment for work done; lien based on payment

The Secretary of the Navy may make partial payments during the progress of work done under a contract made by the Department of the Navy. Partial payments may not exceed the

value of the work done and may be made only under contracts providing therefor and in accordance with the contract provisions. Each such contract shall provide that, when a partial payment is made, a lien on the thing contracted for accrues to the United States on account of the payments so made. This lien is paramount to all other liens. Aug. 10, 1956, c. 1041, 70A Stat. 464.

[sec.] 7522. Contracts for research

(a) The Secretary of the Navy and, by the direction of the Secretary, the Chief of Naval Research and the chiefs of the bureaus may, without advertising, make contracts or amendments or modifications of contracts for services and materials necessary to conduct research and to make or secure reports, tests, models, or apparatus. A contractor supplying such services or materials need not be required to furnish a bond.

(b) Subsections (a) and (b) of section 3324 of title 31 do not apply to advance, progress, or other payments made with respect to a contract under this section.

(c) This section does not authorize the use of the cost-plus-a-percentage-of-cost system of contracting. Aug. 10, 1956, c. 1041, 70A Stat. 464.

(As amended Dec. 12, 1980, Pub.L. 96-513, Title V, sec. 513(38), 94 Stat. 2934; Sept. 13, 1982, Pub.L. 97-258, sec. 3(b)(9), 96 Stat. 1064; Oct. 19, 1984, Pub.L. 98-525, Title XIV, sec. 1405(56)(B), 98 Stat. 2626.)

[sec.] 7523. Tolls and fares: payment or reimbursement

Naval appropriations chargeable for transportation or travel are available for the payment or reimbursement of ferry, bridge, and similar tolls and of streetcar, bus, and similar fares. Aug. 10, 1956, c. 1041, 70A Stat. 464.

CHAPTER 651. -- SHIPS' STORES AND COMMISSARY STORES

[sec.] 7602. Sales: members of Army and Air Force; prices

The Navy and the Marine Corps shall sell subsistance supplies to any member of the Army or the Air Force at prices charged members of the naval service. Aug. 10, 1956, c. 1041, 70A Stat. 471.

[sec.] 7603. Sales: veterans under treatment

A person who has been separated honorably or under honorable conditions from the Army, the Navy, the Air Force, or the Marine Corps and who is receiving care and medical treatment from the Public Health Service or the Veterans' Administration may buy subsistance supplies and other supplies, except articles of uniform, from the Navy and the Marine Corps at prices charged members of the naval service. Aug. 10, 1956, c. 1041, 70A Stat. 471.

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18 USC; Crimes

In District Court Plaintiff's Admitted Trial Exhibit # 190 (from plaintiff's District Court 20 Nov. 1996 submitted paper "Secrecy Order" Laws; additional laws quoted for convenience, and in support of Appendix C-34 to C-60)

United States Code

Title 18

Crimes and Criminal Procedure

from Title 18 United States Code Annotated (USCA) sections 700 to 1080, copyright 1976 by West Publishing Co.:

NOTE "NATIONAL SECURITY" and "ESPIONAGE" cited by Permit A: "The provisions of this permit do not in any way lessen responsibility for the security of the subject matter as imposed by any Government contract OR the provisions of the existing laws relating to ESPIONAGE and NATIONAL SECURITY." (emphasis mine) See Appendix pg.s B-48, C-4, C-9, and C-52 et seq. (C-59 & C-60).

CHAPTER 37 -- ESPIONAGE AND CENSORSHIP

[sec.] 792. Harboring or concealing persons

Whoever harbors or conceals any person who he knows, or has reasonable grounds to believe or suspect, has committed, or is about to commit, an offense under sections 793 or 794 of this title, shall be fined not more than $ 10,000 or imprisoned not more than ten years, or both.
June 25, 1948, c. 645, 62 Stat. 736.

[sec.] 793. Gathering, transmitting, or losing defense information

(a) Whoever, for the purpose of obtaining information respecting national defense with intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains

information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, fueling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, research laboratory or station or other place connected with the national defense owned or constructed, or in progress of construction by the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, stored, or are the subject of research or development, under any contract or agreement with the United States, or any department or agency thereof, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place so designated by the President by proclamation in time of war or in case of national emergency in which anything for the use of the Army, Navy, or Air Force is being prepared or constructed or stored, information as to which

prohibited place the President has determined would be prejudicial to the national defense; or

(b) Whoever, for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts to copy, take, make, or obtain, any sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; or

(c) Whoever, for the purpose aforesaid, receives or obtains or agrees or attempts to receive or obtain from any person, or from any source whatever, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note, of anything connected with the national defense, knowing or having reason to believe, at the time he receives or obtains, or agrees or attempts to receive or obtain it, that it has been or will be obtained, taken, made, or

disposed of by any person contrary to the provisions of this chapter; or

(d) Whoever, lawfully having possession of, access to, control over, or being entrusted with any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, applicance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted or attempts to communicate, deliver, transmit or cause to be communicated, delivered or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it on demand to the officer or employee of the United States entitled to receive it; or

(e) Whoever having unauthorized possession of, access to, or control over any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, instrument, appliance, or note relating to the national defense, or information relating to the national defense which information the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation, willfully communicates, delivers, transmits or causes to be communicated, delivered, or transmitted, or attempts to communicate, deliver, transmit or cause to be communicated, delivered, or transmitted the same to any person not entitled to receive it, or willfully retains the same and fails to deliver it to the officer or employee of the United States entitled to receive it; or

(f) Whoever, being entrusted with or having lawful possession or control of any document, writing, code book, signal book, sketch, photo-

graph, photographic negative, blueprint, plan, map, model, instrument, appliance, note, or information, relating to the national defense, (1) through gross negligence permits the same to be removed from its proper place of custody or delivered to anyone in violation of his trust, or to be lost, stolen, abstracted, or destroyed, or (2) having knowledge that the same has been illegally removed from its proper place of custody or delivered to anyone in violation of his trust, or lost, or stolen, abstracted, or destroyed, and fails to make prompt report of such loss, theft, abstraction, or destruction to his SUPERIOR OFFICER-- (emphasis mine)

Shall be fined not more than $ 10,000 or imprisoned not more than 10 years, or both.

(g) If two or more persons conspire to violate any of the foregoing provisions of this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall

be subject to the punishment provided for the offense which is the object of such conspiracy.

(h)(1) Any person convicted of a violation of this section shall forfeit to the United States, irrespective of any provision of State law, any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, from any foreign government, or any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, as the result of such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c), and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C.

853(b), (c), and (e)-(o) shall apply to --

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistant with this subsection.

(4) Notwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.
June 25, 1948, c. 645, 62 Stat. 736; Sept. 23, 1950, c. 1024, Title I, sec. 18, 64 Stat. 1003. (As amended Aug. 27, 1986, Pub.L. 99-399, Title XIII, sec. 1306(a), 100 Stat. 898.)

[sec.] 794. Gathering or delivering defense information to aid foreign government

(a) Whoever, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers, or transmits, or attempts to communicate, deliver, or transmit, to any foreign government, or to any faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States, or to any representative, officer, agent, employee, subject, or citizen thereof, either directly or indirectly, any document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance, or information relating to the national defense, shall be punished by death or by imprisonment for any term of years or for life.

(b) Whoever, in time of war, with intent that the same shall be

communicated to the enemy, collects, records, publishes, or communicates, or attempts to elicit any information with respect to the movement, numbers, description, condition, or disposition of any of the Armed Forces, ships, aircraft, or war materials of the United States, or with respect to the plans or conduct, or supposed plans or conduct of any naval or military operations, or with respect to any works or measures undertaken for or in connection with, or intended for the fortification or defense of any place, or any other information relating to the public defense, which might be useful to the enemy, shall be punished by death or by imprisonment for any term of years or for life.

(c) If two or more persons conspire to violate this section, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be subject to the punishment provided for the offense which is the object of such conspiracy.

(d)(1) Any person convicted of a violation of this section shall forfeit to the United States irrespective of any provision of State law --

(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation, and

(B) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) The court, in imposing sentence on a defendant for a conviction of a violation of this section, shall order that the defendant forfeit to the United States all property described in paragraph (1) of this subsection.

(3) The provisions of subsections (b), (c), and (e) through (o) of section 413 of the Comprehensive Drug Abuse Prevention

and Control Act of 1970 (21 U.S.C. 853(b), (c), and (e)-(o)) shall apply to --

(A) property subject to forfeiture under this subsection;

(B) any seizure or disposition of such property; and

(C) any administrative or judicial proceeding in relation to such property,

if not inconsistent with this subsection.

(4) Nonwithstanding section 524(c) of title 28, there shall be deposited in the Crime Victims Fund in the Treasury all amounts from the forfeiture of property under this subsection remaining after the payment of expenses for forfeiture and sale authorized by law.
June 25, 1948, c. 645, 62 Stat. 737; Sept. 3, 1954, c. 1261, Title II, sec. 201, 68 Stat. 1219. (As amended Aug. 27, 1986, Pub.L. 99-399, Title XIII, sec. 1306(b), 100 Stat. 898;

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Nov. 18, 1988, Pub.L. 100-690, Title VII, sec. 7064, 102 Stat. 4404.)

In District Court Plaintiff's Admitted Trial Exhibit # 190 (from plaintiff's District Court 20 Nov. 1996 submitted paper "Secrecy Order" Laws; additional laws quoted for convenience. See Appendix C-34 to C-60; B-48, C-4, C-9, C-52 -> C-60)

United States Code

Title 35

Patents

from Title 35 United States Code Annotated (USCA) sections 141 to 280, copyright 1984 by West Publishing Co.:

CHAPTER 14 -- ISSUE OF PATENT

[sec.] 154. Contents and term of patent

Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, subject to the payment of fees as provided for in this title, of the right to exclude others from making, using, or selling the invention throughout the United States, and, if the invention is a process, of the right to exclude others from using or selling throughout the United States, or importing into the United States, products made by that process, referring to the specification for the particulars thereof. A copy of the specification and drawings shall be annexed to the patent and be a part thereof. (July 19, 1952, c. 950, 66 Stat. 804; July 24, 1965, Pub.L. 89-83, sec. 5, 79 Stat. 261; Dec. 12, 1980, Pub.L. 96-517, sec. 4, 94 Stat. 3018.)(As amended Aug. 23, 1988, Pub.L. 100-418, Title IX, sec. 9002, 102 Stat. 1563.)

CHAPTER 17 -- SECRECY OF CERTAIN INVENTIONS AND FILING APPLICATIONS IN FOREIGN COUNTRY

In District Court Plaintiff's Admitted Trial Exhibit # 190 (from plaintiff's District Court 20 Nov. 1996 submitted paper "Secrecy Order" Laws; additional laws quoted for convenience. See Appendix C-34 to C-60; B-48, C-4, C-9, C-52 -> C-60)

[sec.] 181. Secrecy of certain inventions and withholding of patent

Whenever publication or disclosure by the grant of a patent on an invention in which the Government has a property interest might, in the opinion of the head of the interested Government agency, be detrimental to the national security, the Commissioner upon being so notified shall order that the invention be kept secret and shall withhold the grant of a patent therefor under the conditions set forth hereinafter.

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Whenever the publication or disclosure of an invention by the granting of a patent, in which the Government does not have a property interest, might, in the opinion of the Commissioner, be detrimental to the national security, he shall make the application for patent in which such invention is disclosed available for inspection to the Atomic Energy Commission, the Secretary of Defense, and the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States.

Each individual to whom the application is disclosed shall sign a dated acknowledgment thereof, which acknowledgment shall be entered in the file of the application. If, in the opinion of the Atomic Energy Commission, the Secretary of a Defense Department, or the chief officer of another departmentor agency so designated, the publication or disclosure of the invention by the granting of a patent therefor would be detrimental to the national security, the Atomic

Energy Commission, the Secretary of a Defense Department, or such other chief officer shall notify the Commissioner and the Commissioner shall order that the invention be kept secret and shall withhold the grant of a patent for such period as the national interest requires, and notify the applicant thereof. Upon proper showing by the head of the department or agency who caused the secrecy order to be issued that the examination of the application might jeopardize the national interest, the Commissioner shall thereupon maintain the application in a sealed condition and notify the applicant thereof. The owner of an application which has been placed under a secrecy order shall have a right to appeal from the order to the Secretary of Commerce under rules prescribed by him.

An invention shall not be ordered kept secret and the grant of a patent withheld for a period of more than one year. The Commissioner shall renew the order at the end thereof, or at the end of the renewal period, for additional periods of one year upon

notification by the head of the department or the chief officer of the agency who caused the order to be issued that an affirmative determination has been made that the national interest continues so to require. An order in effect, or issue, during a national emergency declared by the President shall remain in effect for the duration of the national emergency and six months thereafter. The Commissioner may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the publication or disclosure of the invention is no longer deemed detrimental to the national security. (July 19, 1952, c. 950, 66 Stat. 805.)

Historical and Revision Notes
(abridged)

Defense Agencies.
The Department of Justice was designated as a defense agency of the United States for the purposes of this chapter by Executive Order No. 10457, May 28, 1953, 18 F.R. 3083.

[sec.] 182. Abandonment of invention for unauthorized disclosure

The invention disclosed in an application for patent subject to an order made pursuant to section 181 of this title may be held abandoned upon its being established by the Commissioner that in violation of said order the invention has been published or disclosed or that an application for a patent therefor has been filed in a foreign country by the inventor, his successors, assigns, or legal representatives, or anyone in privity with him or them, without the consent of the Commissioner. The abandonment shall be held to have occurred as of the time of the violation. The consent of the Commissioner shall not be given without the concurrance of the heads of the departments and the chief officers of the agencies who caused the order to be issued. A holding of abandonment shall constitute forfeiture by the applicant, his successors, assigns, or legal representatives, or anyone in privity with him or them,

of all claims against the United States based upon such invention. (July 19, 1952, c. 950, 66 Stat. 806.)

[sec.] 183. Right to compensation

An applicant, his successors, or legal representatives, whose patent is withheld as herein provided, shall have the right, beginning at the date the applicant is notified that, except for such order, his application is otherwise in condition for allowance, or February 1, 1952, whichever is later, and ending six years after a patent is issued thereon, to apply to the head of any department or agency who caused the order to be issued for compensation for the damage caused by the order of secrecy and/or for the use of the invention by the Government, resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. The head of the department or agency is authorized, upon the presentation of

a claim, to enter into an agreement with the applicant, his successors, assigns, or legal representatives, in full settlement for the damage and/or use. This settlement agreement shall be conclusive for all purposes notwithstanding any other provision of law to the contrary. If full settlement of the claim cannot be effected, the head of the department or agency may award and pay to such applicant, his successors, assigns, or legal representatives, a sum not exceeding 75 per centum of the sum which the head of the department or agency considers just compensation for the damage and/or use. A claimant may bring suit against the United States in the United States Claims Court or in the District Court of the United States for the district in which such claimant is a resident for an amount which when added to the award shall constitute just compensation for the damage and/or use of the invention by the Government. The owner of any patent issued upon an application that was subject to a secrecy order issued pursuant to section 181 of this title, who did not apply for compensation as above

provided, shall have the right, after the date of issuance of such patent, to bring suit in the United States Claims Court for just compensation for the damage caused by reason of the order of secrecy and/or use by the Government of the invention resulting from his disclosure. The right to compensation for use shall begin on the date of the first use of the invention by the Government. In a suit under the provisions of this section the United States may avail itself of all defenses it may plead in an action under section 1498 of title 28. This section shall not confer a right of action on anyone or his successors, assigns, or legal representatives who, while in the full-time employment or service of the United States, discovered, invented, or developed the invention on which the claim is based. (July 19, 1952, c. 950, 66 Stat. 806; Apr. 2, 1982, Pub.L. 97-164, Title I, sec. 160(a)(12), 96 Stat. 48.)

35 USC; Patents

[sec.] 184. Filing of application in foreign country

Except when authorized by a license obtained from the Commissioner a person shall not file or cause or authorize to be filed in any foreign country prior to six months after filing in the United States an application for patent or for the registration of a utility model, industrial design, or model in respect of an invention made in this country. A license shall not grant with respect to an invention subject to an order issued by the Commissioner pursuant to section 181 of this title without the concurrence of the head of the departments and the chief officers of the agencies who caused the order to be issued. The license may be granted retroactively where an application has been filed abroad through error and without deceptive intent and the application does not disclose an invention within the scope of section 181 of this title.

The term "application" when used in this chapter includes

applications and any modifications, amendments, or supplements thereto, or divisions thereof.

The scope of a license shall permit subsequent modifications, amendments, and supplements containing additional subject matter if the application upon which the request for the licence is based is not, or was not, required to be made available for inspection under section 181 of this title and if such modifications, amendments, and supplements do not change the general nature of the invention in a manner which would require such application to be made available for inspection under such section 181. In any case in which a license is not, or was not, required in order to file an application in any foreign country, such subsequent modifications, amendments, and supplements may be made, without a license, to the application filed in the foreign country if the United States application was not required to be made available for inspection under section 181 and if such modifications, amendments, and supplements do not, or did not,

change the general nature of the invention in a manner which would require the United States application to have been made available for inspection under such section 181. (July 19, 1952, c. 950, 66 Stat. 807)(As amended Pub.L. 100-418, Title IX, sec. 9101(b)(1), Aug. 23, 1988, 102 Stat. 1567)

[sec.] 185. Patent barred for filing without license

Notwithstanding any other provisions of law any person, and his successors, assigns, or legal representatives, shall not receive a United States patent for an invention if that person, or his successors, assigns, or legal representatives shall, without procuring the license prescribed in section 184 of this title, have made, or consented to or assisted another's making, application in a foreign country for a patent or for the registration of a utility model, industrial design, or model in respect of the invention. A United States patent issued to such a person, his successors, assigns,

or legal representatives shall be invalid, unless the failure to procure such license was through error and without deceptive intent, and the patent does not disclose subject matter within the scope of section 181 of this title. [1] (July 19, 1952, c. 950, 66 Stat. 807) (As amended Pub.L. 100-418, Title IX, sec. 9101(b)(2), Aug. 23, 1988, 102 Stat. 1568.) [1. So in original]

[sec.] 186. Penalty

Whoever, during the period or periods of time an invention has been ordered to be kept secret and the grant of a patent thereon withheld pursuant to section 181 of this title, shall, with knowledge of such order and without due authorization, willfully publish or disclose or authorize or cause to be published or disclosed the invention, or material information with respect thereto, or whoever willfully, in violation of the provisions of section 184 of this title, shall file or cause or authorize to be filed in any

foreign country an application for patent or for the registration of a utility model, industrial design, or model in respect of any invention made in the United States, shall, upon conviction, be fined not more than $ 10,000 or imprisoned for not more than two years, or both. (July 19, 1952, c. 950, 66 Stat. 807.) (As amended Pub.L. 100-418, Title IX, sec. 9101(b)(3), Aug. 23, 1988, 102 Stat. 1568.)

[sec.] 187. Nonapplicability to certain persons

The prohibitions and penalties of this chapter shall not apply to any officer or agent of the United States acting within the scope of his authority, nor to any person acting upon his written instructions or permission. (July 19, 1952, c. 950, 66 Stat. 808.)

[sec.] 188. Rules and regulations, delegation of power

The Atomic Energy Commission, the

Secretary of a defense department, the chief officer of any other department or agency of the Government designated by the President as a defense agency of the United States, and the Secretary of Commerce, may separately issue rules and regulations to enable the respective department or agency to carry out the provisions of this chapter, and may delegate any power conferred by this chapter. (July 19, 1952, c. 950, 66 Stat. 808.)

E-1
SPECIAL REFERENCES
(introduction)

The following pages are provided as background material related to petitioners earlier case work. The abridged material is used to provide footnotes in a contextual relationship in a way supportive of a day wage payment claim, for work periods: a) previous to the SECRECY ORDER, b) during the SECRECY ORDER, and c) following the SECRECY ORDER. A lifetime effort wage claim is new to and in this instant action; e.g., asks recognition for deferred income and benefits (to be now paid) in order to create the invention, then asks for specific wages to come due (as a Government employee) once the SECRECY ORDER issues (with expenses, such as all patent fees, to be reimbursed). Failure to do so denies the merit of the inventors past achievement (and hard won education), and loses inventors potential future as possible Government researcher. Failure to do so places the inventor in a position wherein the past labor lien accumulated disappears when they disclose works to Government (cf. 10 USC 7522, app. D-74), only to bring

discomfort and poverty upon themselves and their family as a result of this loss. Surely, it would then make more sense for the inventor to do something else with their time and money, e.g., get a guaranteed high paying job (like most people), rather than speculate the value of their time .... and suffer the compounding risks of potential task failure in finding a better way . . . then suffer market risk (commercial), AND special risks imposed by Government(s) (see 18 USC 793 [appendix D-77 or [D-77]] (loss of property at (f) and (h)(1)), 18 USC 794 [D-85] (loss of property at (d)(1)(A), with "used" and "intended to be used" at (d)(1)(B)); as well as obligations under 15 CFR, 22 CFR, 27 CFR, and 37 CFR; note exemptions for Officer, Agent, or Employee of the United States acting within authority (cf. 22 CFR 122.1(b)(1) [D-27], 27 CFR 47.2(c) [D-36], 27 CFR 47.53(a)(1) and (b) [D-42], and 35 USC 187 [D-103])). Thusly, those creative, caring, and committed (inventor/innovators) should be recognized, and compensated for past sacrificial labors; then encouraged through further work.

E-3
SPECIAL REFERENCES
(CA FC "Petition")

Plaintiff-Appellant's (app.)

A D D I T I O N A L
A P P E N D I X "A A"
R E F E R E N C E C O N T E N T S:
[from DENIED "17 Dec. 1998 MOTION WITH APPENDIX (PETITION FOR REHEARING)" HAYNES V US, CA FC #98-1458; see app. A-5]

NOTE: Volume numbers refer to Supreme Court of the United States case #97-8805 (Haynes v. U.S.A.) set admitted into United States Court of Appeals for the Federal Circuit (CA FC) case #98-1458 as a working part of that case; exhibits (exh.) refer to those admitted in District Court on or about 23 September 1997.

I. OPINION with attachments, DECIDED Nov. 6, 1998 Haynes v. US (CA FC No. 98-1458) ...[now A-7; was AA-1] ....A-7]

II. FOOTNOTES AA-2

III. HAYNES v. U.S.A. Loss Calculations: The Madison and Jefferson Letters relating to

E-4

SPECIAL REFERENCES
(CA FC "Petition")

LAWS or Acts pertinent herein
.....AA-3

IV. U. S. Patent: #4,979,917 (from exh. 170; exh. P-15 (file wrapper); also in app. Vol. 4 sec. Front (rear)).

V. U. S. Patent: #4,611,999 (USP# '999) (in exh. P-15 (letter PTO cannot find file wrapper); exh. 330 ('999 test data, also in Vol. 2 sec. 5; as copy with overlays as originally sent to PTO: exh. P-28); exh. 120-1 (1/2) (#050,199 application as filed 6/20/1979 .... with drawings Fig.'s 1-11 which are substantially reproduced in Fig.'s 1-11 in SECRECY ORDER patent #4,979,917). Exh. 120-1(1/2) also contains drawing from USP# '917 (Fig. 1) showing relationship of "all patents by Haynes", which is substantially USP# '999 (Fig. 1).

VI. Copied '999/'917 DRAWING is found in Vol. 6 sec. "V".

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SPECIAL REFERENCES
(CA FC "Petition")

VII. Pre-Secrecy Order Brochures (jet auxiliary thruster and bow thrusters with maximum power promoted up to 300 hp. diesel using others readily available waterjet pumping sections: exh. 120-1(2/2); also letters to MILITARY SUPPLIER competitor(s) for applications into thousands of horsepower. See also TESTIMONY Haynes Vol. 5, sec. REAR, especially pg. 94, line 7 to pg. 95, line 25 ("I wasn't selling them specifically stealth systems. I was examining the possibility of selling them a new class of marine propulsion device utilizing my previous patent" Pg. 95, lines 8-10).

VIII. Haynes to Berkeley Pump letter of 22 June 1978 indicating design upsizing (exh. 120-1(2/2) pg. 8; in Vol. 2 sec. 6.

IX. Parsons III to Haynes letter 9 August 1996; Marine Propulsion commercial success (exh. 120(2/2) pg. 6; in Vol. 2 sec. 7. See

also TESTIMONY Parsons Vol. 5, sec. REAR.

X. Mr. Jack Kobayashi jet auxiliary 300 hp. proposal and drawings per U. S. Patent #4,611,999 consistent with appellants brochures and pre-SECRECY ORDER activity in VI. above (whole exh. 110 in app. Vol. 4 sec. ITAR "rear").

XI. P E O P L E W A N T I N G '9 1 7 P R O D U C T

Captain GEORGE PARSONS III testimony that he wants to buy [is interested in] 2 each U. S. Patent #4,979,917 Fig. 18 azimuth thrusters, not jet auxiliary per U. S. Patent #4,611,999 as has been his past practice (Vol. 5 sec. Rear, pp. 156 to 162 inclusive). See XI below.

ROGER E. DRILL (President, NORDIC TUGS) (Vol. 5 sec. Rear, pg. 99 line 16 to pg. 100 line 25. Fig. 18 azimuth thruster of '917 patent may provide "bow thruster" and "get home system". Exhibit 560 is

response letter to ACTIVE ORDER proposal for ASAP delivery of "two (2) units with hydraulics (bow/stern thruster set with "get-home") as soon as possible, and these were to be supplied to you as your R. & D. units (supplied to you without warranty)...". Haynes to Roger Drill letter 16 Nov. 1995 (1 page). Comments on market, installing as standard option in vessels produced. See XI below.

GARY ZENTNER testimony that his firm "Would be open to a solution ... absolutely." (Vol. 5 sec. Rear pg. 55, line 3 to pg. 56 line 56) "competing tunnel thruster called Brunvoll that uses a bubbly flow around the tunnel, which -- A. Okay Q. -- my device would be competing -- " (Appellant admitted exhibit P-33, Dyrkorn et al. U. S. Patent number 4,629,432 (12/16/1986), exhibit 370, Dyrkorn U. S. Patent number 4,884,985; both assigned to Brunvoll Motorfabrik A/S, Molde, Norway. File wrappers in exh. P-15 show no indication of SECRECY ORDER); in exhibit 180-"B" brochure with "Brunvoll's patented

Super Silent Bow thruster" can be seen. See '917 patent Fig. 15 covered by SECRECY ORDER.

XII. CONTACTS OF INTEREST at the Work Boat Show (New Orleans, U.S.A.) 6 Dec. to 8 Dec. 1996 expressing interest primarily in the technology represented in Fig. 18 of U.S. Patent #4,979,917 (using '917 patent as disclosure material per 22 CFR para. 120.11 (a)(5) and 22 CFR para. 122.1 (b)(2) and (b)(4)); see exh. 220 and 230; (see also exhibit 400 (patent to Kaul et al. U. S. Patent number 5,520,557 of 5/28/1996 (exh. P-27), and exhibit 410 (patent Lais et al. U. S. Patent number 5,146,865 of 9/15/1992), both assigned to Schottel-Werft of Spay, Germany). Schottel-Werft is old successful global waterjet azimuth jet thruster maker. Brochure material for Schottel in exhibit 180-"B". NOTE: waterjet azimuth thruster is contained in U. S. invention by Barney B. Holland, U. S. Patent number 3,098,464 (filed 10 April 1962; OFFICIAL GAZETTE sheet of July 23, 1963 admitted in exhibit

180-"D"); shown in relation to SCHOTTEL patents exh. 180-"E".

XIII. ARCTIC ICE LUBRICATION and PROPULSION SYSTEM NOISE, CANADA [U. of British Columbia scholar] "INTERNET" advertised commercial need over non-military (animal) environment concerns (exh. P-22 and P-23).

Note: exhibits 130, 150, and 160 contain material which may related to Nation's ship applications wherein governments may endorse the suitability of equipment for an application, such as the United States Navy does for competitor(s).

XIV. RETIREMENT: exh. 290 (app. Vol. 2 sec. 1)

A P P E N D I X A A - 1

OPINION with attachments, DECIDED Nov. 6, 1998 Haynes v. US (CA FC No. 98-1458), see appendix A-7;

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SPECIAL REFERENCES
(CA FC "Petition")

A P P E N D I X A A - 2

F O O T N O T E S

FN1 United States Court of Appeals for the Federal Circuit (CA FC) Rule 40(c); OPINION for Haynes v. US CA FC case no. 98-1458, OPINION FILED AND JUDGEMENT ENTERED: 11/06/98. ["petition for rehearing be, and the same hereby is, DENIED" filed January 4, 1999"].

FN2 United States District Court for the Western District of Washington, Hon. John L. Weinberg's REPORT AND RECOMMENDATION (proceeding #42 dated Oct. 7, 1996) seemed to allow portions of COMPLAINT to further promotion and development of the invention in a way similar to way U. S. Navy participated with competitor; COMPLAINT 8 through 12 (see appellants Supreme

FN2 (continued)
Court of the United States case number 97-8805 Rule 33.2 Petition, entered as reference and supportive material to United States Court of Appeals for the Federal Circuit (CA FC) case number 98-1458; Volume 1 section (sec.) COMPLAINT), which asks to "restore lost opportunity", "to participate in development", "assistance in development", "reimburse .... for loss of business", and (most important) "specific legal instructions".

FN3 "Sacrificial days devoted to such activities deserve rewards commensurate with the services rendered." Mazer v. Stein, 347 U.S. 201, 219, also 100 USPQ 325, 333 (1954)

"The Invention Secrecy Act of 1951, 35 U.S.C. 181-188, provides for nondisclosure of information contained in patent applications when certain officials of the United States believe that disclosure would be inimical to the national

FN3 (continued)
interest. The result is that the inventor does not receive a patent until the necessity for secrecy ceases and hence he is unable to exploit the fruits of his labor. In order to protect the inventor and encourage the discovery of inventions having military application, the inventor whose patent has been withheld under a secrecy order has a right created by the act to obtain compensation from the United States, and the act sets forth alternative procedures whereby this right may be realized. These procedures are set forth in the act with a majestic simplicity that disregards the manifold problems engendered by the creation of the remedy."
HALPERN v. US (4 August 1958), 118 USPQ 387

"The limited legislative history of the Invention Secrecy Act of 1951 casts no light on the judicial problem before us, but that history is not in any

FN3 (continued)
way inconsistent with the position that Congress intended to provide a comprehensive scheme for compensation to invention-owners proving damages due to a secrecy order. See S.Rep.No.1001, 82d Cong., 1st Sess. (1951); H.R.Rep.No.1028, 82d Cong., 1st Sess. (1951); Hearings on H.R. 4687 before Subcommittee No. 3, Committee on the Judiciary, 82d Cong., 1st Sess. (August 21, 1951)." Constant v. US 206 USPQ 318, also cited as 617 F.2d 239 (1980) and No. 406-78 (United States Court of Claims, March 19, 1980; footnote 9)

"The core of the legislation is recovery of ALL "damage caused by the order of secrecy and/or for the use of the invention by the Government." (emphasis mine). Constant v. US 206 USPQ 318, also cited as 617 F.2d 239 (1980) and No. 406-78 (United States Court of Claims, March 19, 1980; footnote 10)

FN3 (continued)

"As the plaintiff observes, if the patent were withheld for one day because of the secrecy order, section 183 would grant both administrative and judicial jurisdiction of a claim like plaintiff's for disruption by the secrecy order of promotion and development, even though the delay in the patent itself would obviously have little or nothing to do with such a claim." Constant v. US 206 USPQ 318, also cited as 617 F.2d 239 (1980) and No. 406-78 (United States Court of Claims, March 19, 1980; footnote 10)

"As we have already suggested, if the patent was withheld a short while because of the order, the statute would grant both administrative and original judicial jurisdiction of a claim just like plaintiff's for interference with promotion and development of the invention DURING THE ENTIRE EXISTENCE OF THE SECRECY ORDER." (emphasis mine) Ibid. CONSTANT v. US (1980), 206 USPQ 318 (footnote 12)

FN3 (continued)

In the EMPLOYMENT ACT OF 1946, as amended, 15 U.S.C. 1021-1024, the policy of the Government is held to be:

"...use all practicable means, consistent with its needs and obligations and other essential national policies,...to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote FREE COMPETITIVE ENTERPRISE and the GENERAL WELFARE, conditions which promote useful employment OPPORTUNITIES, including SELF-EMPLOYMENT, for those able, willing, and seeking to work, and promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth. ..." emphasis mine (see ROBERTS' DICTIONARY of INDUSTRIAL

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SPECIAL REFERENCES
(CA FC "Petition")

FN3 (continued)

RELATIONS, Fourth Ed., Harold S. Roberts, c. 1994 (The Bureau of National Affairs, Washington, D.C.; ISBN 0-87179-777-1), pg. 215). (note added 03/16/1999: Ibid. cites source reference: Employment Act of 1946, as amended, 15 U.S.C. 1021-1024 (1982); Leon H. Keyserling, HOW WELL IS THE EMPLOYMENT ACT OF 1946 ACHIEVING ITS GOAL? (Washington: U.S. Dept. of Labor, Manpower Administration, Seminar on Manpower Policy and Program, 1966; other references cited)

A P P E N D I X A A - 3

LAWS as summarized in The Madison and Jefferson Letters (excerpts from); [possible] entitlement calculations:

E-17
SPECIAL REFERENCES
(CA FC "Petition")

DISCUSSION: Hon. John L. Weinberg, in his Report and Recommendation of 7 Oct. 1996, wrote:

> "Plaintiff claims, and the United States does not dispute, that during the time the Secrecy Order was in effect, he was effectively prohibited from selling and promoting his inventions. This limitation extended not only to the modified version covered by the pending patent application, but also to the earlier versions, because the earlier versions were incorporated in the new one." app. Vol. 1 sec. 6 pg. 3; proceedings #42. [see app. A-47]

If appellant had been advised of this by the U. S. Navy on or about 18 December 1987, he could have sold off what he had invested in ..... and got a good paying job, with benefits (including health insurance), vacations, and retirement plan (including maybe a

401 K with stock options). This did not happen.

Appellant [respectfully] asks [if it be proper] for what he missed out on to date [for what is lawful and rightful; cf. app. C-9].

Appellant herein suggests precedence for what Honorable William L. Dwyer suggests as "entitled" (Trial Testimony in app. Vol. 5 sec. Front, pg. 82, lines 21-25; pg. 83, lines 1-23), e.g., perhaps moment of entitlement, by reflecting on a LETTER from the Honorable James Madison Jr., to Honorable Thomas Jefferson, dated Richmond Jan. 9, 1785: (with reference to Mr. James Rumsey):

> "An act giving James Rumsey the exclusive privilege of constructing and navigating certain boats for a limited time. J. Rumsey by a memorial to the last Session represented that he had invented a mechanism, by which a boat might be worked with little labour at the rate of

from 25 to 40 miles a day, against a stream running at the rate of 10 miles an hour, and prayed that the disclosure of his invention might be purchased by the public. The apparent extravagance of his pretensions brought a ridicule upon them, and nothing was done. In the recess of the Assembly, he exemplified his machinery to General George Washington and a few other gentlemen, who gave a certificate of the reality and importance of the invention, which opened the ears of the Assembly to a second memorial. The act gives a monopoly for ten years, reserving a right to abolish it at any time on paying Ł 10,000. The inventor is soliciting similar acts from other States, and will not I suppose publish the secret till he either obtains or despairs of them." (L symbol substituted for Virginia Pound symbol since pound not part of this computers symbols; currency in 1785 value; see THE REPUBLIC OF LETTERS, The Correspondence between

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SPECIAL REFERENCES
(CA FC "Petition")

Thomas Jefferson and James Madison 1776-1826 (edited by James Morton Smith, Volume One 1776-1790, W.W. Norton and Co., N.Y. and London; ISBN 0-393-03691-X, pgs. 359-360)

This currency symbol represents relationally is compared in another Act as:

"Act for regulating the Salaries of the Civil list. Reduces that of the Governor from Ł 1000 to Ł 800 and the others some at a greater and some at a less proportion." (Letter: Madison to Jefferson Richmond Jan. 22, 1786; Ibid. pg. 407)

"Act for disposing of waste lands on Eastern waters. Meant cheifly to affect vacant land in Northern Neck, erroneously conceived to be in great quantity and of great value. The price is fixed at Ł 25 per Hundred Acres at which not an acre will be sold." (Letter: Madison to Jefferson Richmond Jan. 22, 1786,

Ibid. pg. 407)

"Prices Current. Tobo. 23s on James River and proportional elsewhere

Wheat 5s to 6s per Bushel
Corn 15s to 20s per Barrel
Pork 28s to 30s per Ct."

(Letter: Madison to Jefferson Richmond Jan. 22, 1786, Ibid. pg. 408)

S E C R E C Y O R D E R
A W A R D

See FN3 herein, as well as appellants Rule 33.1 Book (Supreme Court of the United States (S. Ct.) case number 97-8805) attached as part of CA FC case number 98-1458; especially index references to James Rumseh, John Fitch, and Robert Fulton (pg. xciii). All the case individuals were proven capable

leaders in their field (issued patents), were capable of converting their ideas into operational form, and were tenacious ... e.g., able to accept repeated failure as they iteratively advanced their design to eventual success. Further, each employed valuable help of others, but were unable to profitably work together [e.g., Fitch, Fulton, and Rumsey. Efforts failed to combine core unduplicated focus and preserve craft expertise.]

Per[haps] Hon. William L. Dwyer, [may hint] appellant is [may be] ENTITLED to an award at the time the SECRECY ORDER is issued. [see Vol. 5 TRIAL TESTIMONY, pg. 82 line 23 to pg. 83, line 17]. Appellant suggests "ENTITLE.."ment or Government interference PENSION has been admitted in Government Assembly, ... the merits of which was argued by General George Washington himself (see appellants appendix (app.) E-18), and the value of this entitlement having been set (at that time to about 10 to 12 years Governors Salary and benefits, and equating to current

salary, according to THE WORLD ALMANAC ....1997; pg. 128: Virginia @ $ 110,000/yr.; Washington State @ $ 121,000) .... which seems to equal $ 1.1 million to $ 1.32 million in Virginia or $ 1.21 million to $ 1.452 million in Washington State. This is based on Mr. James Rumseh 10,000 Pound Virginian entitlement conversion to 1785 period Virginia Governor Salary and using this as value expression for the periods time and location. This is within the range of U. S. Navy retirement entitlement requested by appellant COMPLAINT Prayer for Relief Counts 5 and 6 (in appellants Vol. 1, sec. COMPLAINT (this being fully admitted in Court within exhibits Volume 11, tab COMPLAINT), pgs. 13 to 16; specifically (count 5, pg. 14) "Navy pay rules.... include a pension accrued as if the inventor shall have served in the military in a rank of merit under guidelines as they now exist."; and "all lost salary wages and accrued vacation time restored (including interest applied thereto). This and the above shall include health care benefits." See exhibit 290 (found

in appellants Volume 2 sec. 1), under "POINTS OF INTEREST" (Proceedings, April 1996, pg. 106), Grade O-6; also mode (likely) USN rank "LIFE" member SNAME;

> "Part 541 of the Rules of the Fair Labor Standards Act (FLSA) [of 1938, as amended, 29 U.S.C. para. 201 et seq. (1982)] defines an executive as an employee (1) whose primary duty involves the management of an enterprise, department, or subdivision, (2) who directs the work of two or more employees, (3) who has the authority to hire, fire, and promote employees, (4) who exercises discretionary powers, and (5) who devotes at least 80 percent of work hours to such activities. These employees are exempt from the overtime and minimum wage requirements of the FLSA.
>
> By function, executives are general managers with company wide duties, operating managers with day-to-day

> responsibilities for business activities, or staff managers who lead the corporate functional staff departments. By title, executives are known as managers, vice presidents, presidents, chief operating officers, chairpersons, or chief executive officers." (citations omitted) ROBERTS' DICTIONARY OF INDUSTRIAL RELATIONS, Fourth Edition, by Harold S. Roberts (BNA c. 1966, 1971, 1986, 1994; ISBN 0-87179-777-1: pg. 234). (See pg. 8: FLSA does not seem to protect self employed per policy of EMPLOYMENT ACT OF 1946, as amended, 15 U.S.C. 1021-1024; e.g. protect Inventors).

Appellant documented "vision" and "name" of Wolfpak Marine in 1973 (DEPOSITION in Vol. 4 sec. Front, page 16, lines 5 to 15);

> "when I left the Boeing Company I decided I was going to make a very good propulsion pump.
>
> Q. So you started your own business then?

A. That is correct, Your Honor.

Q. And that was in '75?

A. 1975, yes, yes, Your Honor.

Q. And you carried on that business until when?

A. I officially closed the doors in 1993 on Wolfpak Marine.... I've been pretty much shut down ... studying law."

(Vol. 5 sec. Rear, TRIAL Haynes testimony, pg. 65, lines 8-19).

"I did part-time work, various sorts of things in order to finance development of certain of my inventions. Thats how I filled the cash flow gap."

(Vol. 4 sec. Front, pg. 18, lines 6-9); with Wolfpak Marine becoming

sole source of "job income, 1984."

(Ibid., pg. 22, lines 16-19)."

In summary, FLSA of 1938, as amended, 29 U.S.C. para. 201 et seq. (1982) does not protect inventor/entrepreneurs; Seamlessly: Active U.S. Army 1966-1968, Inactive Reserve U.S. Army 1969-1972 (Hon. Discharge 1972) while going to College, began WOLFPAK MARINE 1973 and is engaged in product litigation from its outcome to this very moment.

Appellant enlisted in the United States Army in 1966 (thus qualifying for "Final Pay Plan", with Honorable discharge in 1972 (6 years combined service [check if 4 years inactive service for is countable]). Marine Propulsion business began in 1975 (with evidence of evolution in the Court record and with the United States Patent Office), and is still engaged with this work (since 1987 engaged in SECRECY ORDER related matters); thus 6 years plus 23

years = 29 yrs. Age 51 benchmark occurred on 19 Dec. 1998. Thus, starting annual retired pay should [may] be about $ 51,261 a year (plus benefits), with expected lifetime retired pay in constant dollars of $ 1,517,819 (plus benefits, which may include the use of the fine military hotel on Waikiki Beach, Hawaii). Currently, Social Security age 62 retirement benefit is rated at $ 360.00, and appellant is not entitled to a disability pension, as it requires 28 credits, 20 of these earned in the last 10 years. Appellant was placed under SECRECY ORDER on or about December 18, 1987; and issues have continued (administrative action beginning in 1992, and complaint in court filed 1996); e.g., the last 11 years now under the effects of the SECRECY ORDER.

It should be noted that a Governor has many benefits, such as a staff, a Governor's mansion, etc.; thusly while Navy lifetime pay estimate of $ 1,517,819 may be higher than Governor of Washington estimate conversion of $ 1.21

million to $ 1.452 million, the difference may not account for the substantial additional benefits a Governor may receive, nor the lower probability of the inventor receiving the full amount, as the retirement award is spread out over time, while James Rumsey's award (10,000 in Virginia Pound) is a lump sum which may be then [be] inherited later on [by his heirs].

I.) Appellant proposes, perhaps consistent with Honorable William L. Dwyer's comments at District Court TRIAL (see app. E-18; [or Vol. 5 TRIAL TESTIMONY, pg. 82 line 23 to pg. 83, line 17]), that issuing agency (United States Navy) should give pension guarantee for loss before SECRECY ORDER.

Appellant used available time and materials ("sacrificial" days and materials) to do his work. Thusly, he did not have an income on which to pay taxes (including Social Security and pension plans), his cash ... when he should have some ... going into developing his

invention(s) and his capacity to produce. Government workers, who's efforts have Government guarantees, receive regular payment of salaries, benefits, and receive retirement guarantees (see Vol. 1 sec. COMPLAINT at count 21 (pg. 6)). This includes military suppliers (see Vol. 2 sec. 8 SPEEA professional contract with the Boeing Co.).

Compare (see admitted exhibit 290, in app. Vol. 2 sec. 1; also herein as app. A-3) Navy PENSION PAY (O-6) received by salary earners (U.S. Navy: at age 51: $ 4,271.75/mo.) and that earned by "SACRIFICIAL DAYS" Secrecy Order researcher (the appellant: at age 62: $ 360.00/mo.). E.g., pension earned is less than 8.5 % (eight point five percent) of Navy, and reduced by the actuarial odds of seeing it over a decade from now. Further, if appellant should injury himself on the job, he is NOT entitled to a DISABILITY as he is underqualified on "credits", having spent much (since 1993) of the last ten years battling

instant issue. Appellant argues this becomes a conversion standard under 35 U.S.C.A. 183. FN3 [app. E-11 -> E-15]

II.) Appellant proposes, perhaps consistent with Honorable William L. Dwyer's comments at District Court TRIAL [see app. E-18], that issuing agency (United States Navy) should pay back salary for loss AFTER the SECRECY ORDER, as they failed to NOTIFY; and ALLOW appellant to get a JOB. This consists of three (3) periods, a) SECRECY order to time U. S. Patent issued (25 Dec. 1990; "public domain" information per 22 C.F.R. para. 120.11 (a)(5)), b) Patent issuing date (25 Dec. 1990) to time appellant closed his business (1993), and c) Business close (1993) to present. Appellant argues a-c should be treated as a continuous period, as he has not been given SPECIFIC WRITTEN LEGAL INSTRUCTIONS, including 35 U.S.C. 183 claim form ... but instead turn his focus and attention away from mounting danger and become a law student (e.g. denied income from elsewhere).

His "sacrificial day" losses thus continued.

Using again Vol. 2 sec. 1 exhibit 290 SSI (pg. 2) Maximum Taxable Earnings as constant dollar measure, reported earnings are subtracted from USN potential earnings and potentials are then summed, noting 1993 was SSI limit maximum. This assumes, had I had instructions, I could have done something else. Note also Vol. 2 sec. 8, and SPEAA salary grade 18 and 20 being higher than this assumption.

[T E R M S]

Estimated Pay, CAPTAIN O-6;
100%/70% X $51,261 =
$ 73,230.00
(Vol. 2 sec. 1 exh. 290,
[PROCEEDINGS, 4/96 pg. 106,]
"Points of Interest")

E-33

SPECIAL REFERENCES

(CA FC "Petition")

Estimated Social Security Navy Ratio, using 1997)

$ 73,230.00/$ 65,400 =

1.1197247 = ESSNR

(this creates a ratio in 1997 time constant SSI units)

Annual Pay Due Fraction (APDF) =

ESSNR - Pay Ratio received

(this takes Navy pay and subtracts current pay)

Pay Ratio received =

Reported Earnings/Maximum Taxable Earnings.

(this creates a ratio in time constant SSI units)

Total pay due for all years =

Sum of APDF X $ 65,400.00

(this returns a total sum in current SSI unit based 1997 $ related to U. S. Navy Captain pay)

From Vol. 2 sec. 1; SSI pg. 2

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SPECIAL REFERENCES
(CA FC "Petition")

ANNUAL DUE	PAY FRACTION	
1988	1.1197247 -	0 / 45,000
	=	1.1197247
1989	1.1197247 -	16,657/43,800
	=	.7394279
1990	1.1197247 -	405/51,300
	=	1.11183
1991	1.1197247 -	14,735/53,400
	=	.8437884
1992	1.1197247 -	10,880/55,500
	=	.9236887
1993	1.1197247 -	0 / 57,600
	=	1.1197247
1994	1.1197247 -	0 / 60,600
	=	1.1197247
1995	1.1197247 -	3,023/61,200
	=	1.0703293
1996	1.1197247 -	0 / 62,700
	=	1.1197247
1997	1.1197247 -	0 / 65,400
	=	1.1197247
1998	1.1197247 -	0 / 65,400
	=	1.1197247
		==========
TOTAL, SSI maximum constant units	=	11.4074125

E-35
SPECIAL REFERENCES
(CA FC "Petition")

a) 11.4074125 X $ 65,400
= $ 746,044.78
(total of SSI ratio) X
(current SSI max.) = Due

11 yrs. X $73,230.00/yr. =
$ 805,530.00
less a) ($ 746,044.78)

b) $ 59,485.22

c) $ 59,485.22/11 = $ 5,407.75/yr.
in constant SSI $
("sacrificial days" appellant
[corrected] average income/yr.)

d) Captains Pay @ $73,230.00/yr.

e) c)/d) = inventors [corrected]
income as % CAPTAIN
[corrected] PAY = 7.4%

E-36
SPECIAL REFERENCES
(S.Ct Waiver Ans.)

No. 9 7 -- 8 8 0 5

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997 (FN1)

HENDRICK W. HAYNES

-- PETITIONER

VS.

UNITED STATES OF AMERICA

-- RESPONDENT

Seth P. Waxman, Solicitor General
Counsel of Record

RESPONSE TO THE U.S.A. WAIVER

[from Haynes v. U.S.A. Petition for a Writ of Certiorari, paper dated 24 May 1998 (case Sup. Ct. No. 97-8805) "RESPONSE to U.S.' WAIVER"]

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SPECIAL REFERENCES
(S.Ct Waiver Ans.)

May it please the court. Petitioner respectfully submits that Constitutional principles may have been violated, as knowledge has been taken away from the public (FN2), and public innovation is discouraged (FN3). An ACT OF CONGRESS passed about 50 years ago suggests court (FN4)(FN5) resolve this problem. "ITAR" controls this art. (FN6)(FN7)

FN1 Petitioner wrote "OCTOBER TERM, 1998" on case No. 97-8805. Case No. 97-8805 was docketed April 23, 1998, which by Supreme Court Rule 3, may be term beginning "OCTOBER TERM, 1997". Please correct me if I am wrong.

FN2 See "PETITION..." No. 97-8805, Vol. 1, Sec. 6, pg. 3, lines 7-13; also value of this research at Vol. 2, Sec. 4. Vol. 10 (Video) shows stages (see also Vol. 6; Vol. 5 has extensive testimony in rear portion). See Attachment "A", esp. pg. 3/7 at 2. and 3., and FN3.

E-38
SPECIAL REFERENCES
(S.Ct Waiver Ans.)

Petitioners meager current subsistence is derived from an inheritance (FN8); Court has ruled "ITAR" shuts his business down. (FN9) See attachment "A".

Respectfully,

/s/
Hendrick W. Haynes (Pro Se)
17427 - 195th Plc. SE
Renton, Washington U.S.A.
98058
(425) 432 - 3071

FN3 Ibid., Vol. 1, Sec. 4; no "Rightful and Lawful" award (see Civil Cover Sheet and COMPLAINT Sec. in Vol. 1).

FN4 Ibid., Vol. 1, Sec. 15, pg. 23 (top: Hon. Mr. Rogers).

FN5 "Section 183.... can fairly be interpreted as mandating compensation for secrecy order..." Hornback v. U.S. (US CtFedCl) 40 USPQ2d 1694, dec. Oct. 4, 1996.

SPECIAL REFERENCES
(S.Ct Waiver Ans.)

FN6 See "PETITION..." No. 97-8805 Vol. 4 "ITAR", 22 CFR 120.4(a) "... submit a report to Congress..."; 22 CFR 120.10 (a)(3), 120.9(a)(1), 120.6, 120.17 (all). See 22 CFR 120.27 for the U.S. CRIMINAL STATUTES petitioner is placed under.

FN7 "In... Wheaton v. Peters (1834) ... there was a tension between the (monopoly) rights of creators and the free-market interests of the business public." (A HISTORY OF AMERICAN LAW, Second Edition, by Lawrence M. Friedman; ISBN 0-671-81591-1, pg. 257). See "PETITION..." No. 97-8805, Vol. 1, Sec. 12, pg. 44 for case; also Vol. 9, Sec. 14, pg. 356 (Gibbons v. Ogden, 9 Wheaton 1; opinion rendered March 2, 1824, Chief Justice Marshall delivering opinion of U. S. Supreme Court).

FN8 Ibid., Vol. 5, Sec. Rear, pg. 65, lines 22-25.

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SPECIAL REFERENCES
(S.Ct Waiver Ans.)

FN9 Ibid., Vol. 1, Sec. 6, pg. 3, lines 7-13 with no patent "Rightful and Lawful" award possible under Constant v. U.S. case theories, and District Court issued ORDER not to make "USED" theory (cf. Vol. 1, Sec. 4, pg. 4, lines 18-24; compare with "Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered." language found in MAZER v. STEIN, 347 U.S. 201, 219, 100 USPQ 325, 333 (1954); also Vol. 1, Sec. 7 for "used").

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SPECIAL REFERENCES
(S.Ct Waiver Ans.)

A T T A C H M E N T " A "
[to Haynes v. U.S.A. S.Ct. No. 97-8805 "Petition for Certiorari" paper dated 24 May 1998 "RESPONSE to U.S.' WAIVER"]

See McCarthy's DESK ENCYCLOPEDIA OF INTELLECTUAL PROPERTY (second edition, ISBN 0-87179-899-9) under "Constitution" (pages 79-81). And:

1. "The economic philosophy behind the clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors in 'Science and useful Arts.' Sacrificial days devoted to such creative activities deserve rewards commensurate with the services rendered." (Mazer v. Stein, 347 U.S. 201, 219, 100 USPQ 325, 333 (1954)). [NOTE: word "inventions" in ENCYCLOPEDIA text changed to "inventors" per text found in citation].

SPECIAL REFERENCES
(S.Ct Waiver Ans.)

2. "[T]he federal patent power stems from a specific constitutional provision.... The clause is both a grant of power and a limitation... The Congress in the exercise of the patent power may not overreach the restraints imposed by the stated constitutional purpose.... Congress may not authorize the issuance of patents whose effects are to remove existent knowledge from the public domain, or to restrict free access to materials already available, and things which add to the sum of useful knowledge are inherent requisites in a patent system which by constitutional command must 'promote the Progress of ... useful Arts.' This is the standard expression in the Constitution and it may not be ignored." (Graham v. John Deere Co., 383 U.S. 1, 6, 148 USPQ 459, 462 (1966).

3. "The clause thus describes both the objective which Congress may seek and the means to achieve it.

3. (continued)
The objective is to promote the progress of science and the arts. As employed, the terms 'to promote' are synonymous with the words 'to stimulate,' 'to encourage,' or 'to induce.' To accomplish its purpose, Congress may grant to authors the exclusive right to the fruits of their respective works. An author who possesses an unlimited copyright may preclude others from copying his creation for commercial purposes without permission. In other words, to encourage people to devote themselves to intellectual creation, Congress may GUARANTEE to authors and inventors a reward in the form of control over the sale or commercial use of copies of their works." (Goldstein v. California, 412 U.S. 546, 555, 178 USPQ 129, 133 (1973)). Emphasis mine.

4. "The [constitutional] Patent Clause itself reflects a balance between the need to encourage innovation and the avoidance of

4. (continued)
monopolies which stifle competition without any concomitant advance in the 'Progress of Science and the useful Arts.' ... Taken together, the novelty and nonobvious requirements express a congressional determination that the purposes behind the Patent Clause are best served by free competition and exploitation of that which is already available to the public, or that which may be readily discerned from publicly available material... [T]he Patent and Copyright Clauses do not, by their own force or by negative implication, deprive the States of the power to adopt rules for the promotion of intellectual creation within their own jurisdictions." (Bonito Boats Inc. v. Thunder Craft Boats Inc., 489 U.S. 141, 146, 9 USPQ2d 1847, 1850, 1852, 1858 (1989).

5. 35 U.S.C. 154. (1983)
Contents and term of patent

> Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, subject to the payment of issue fees as provided for in this title, of THE RIGHT TO EXCLUDE OTHERS FROM MAKING, USING, OR SELLING THE INVENTION THOUGHOUT THE UNITED STATES, referring to the specification for particulars thereof. . . .

6. "It should hardly need saying that the issuance of a patent gives no right to make, use or sell a patented invention, 14 or that the absence of a patent creates no legal prohibition against continued research or development." Animal Legal Defense Fund v. Quigg, 932 F.2d 920, 935, 18 USPQ2d 1677, 1689 (Fed. Cir. 1991). Footnote 14 at page 1692 above states "Footnote 14. A patent provides only a right to exclude others from practicing the invention for a limited time. See 35

6. (continued)
U.S.C. 154; Eli Lilly and Co. v. Medtronic, Inc., 110 S.Ct. 2683, 2688, 15 USPQ2d 1121, 1126 (1990); Dawson Chem. Co. v. Rohm & Haas Co., 448 U.S. 176, 215 [206 USPQ 385](1980)."

7. "Once patent issues, it is strictly construed; it cannot be used to secure any monopoly beyond that contained in patent, patentee's control over product when it leaves his hands is sharply limited, and patent monopoly may not be used in disregard of antitrust laws." Sears, Roebuck & Co. v. Stiffel Co., 376 U.S. 234, 140 USPQ 525.

"When patent expires the monopoly created by it expires, and right to make it precisely the shape it carried when patented, passes to the public." Ibid.

"Patent system is one in which uniform federal standards are carefully used to promote invention while at the same time preserving free competition."

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SPECIAL REFERENCES
(S.Ct Waiver Ans.)

7. (continued)
Ibid.

Cf. Troxel Mfg. v. Schwinn Bicycle Co., 175 USPQ 67.

8. "Infringer that can count on paying only normal routine royalty noninfringers might have paid and thus would have nothing to lose, and everything to gain, except for limited risk that patent owner might meet heavy burden of proving four elements required for recovery of lost profits, over years, would be in "heads-I-win, tails-you-lose" position." Panduit Corp. v. Stahlin Bros. Fibre Works, Inc. 197 USPQ 726 (Court of Customs and Patent Appeals, No. 75-2417 Decided April 25, 1978).

9. 17 U. S. C. 104 [1977]. Subject matter of copyright: National Origin

9. (continued)

(a) Unpublished Works. -- The works specified by sections 102 and 103, while unpublished, are subject to protection under this title without regard to the nationality or domicile of the author.

17 U. S. C. 103 [1977]. Subject matter of copyright: Compilations and derivative works

(a) The subject matter of copyright as specified by section 102 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully.

(b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as

9. (continued)

distinguished from the preexisting material employed in the work, and does not imply an exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of, any copyright protection in the preexisting material.

17 U. S. C. 102 [1977]. Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the

9. (continued)
following categories:

(1) literary works;

(2) musical works, including any accompanying words;

(3) dramatic works, including any accompanying music;

(4) pantomimes and choreographic works;

(5) pictorial, graphic, and sculptural works;

(6) motion pictures and other audiovisual works;

and

(7) sound recordings.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system,

9. (continued)
method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work. Pub. L. 94-553, Title I, par. 101, Oct. 19, 1976, 90 Stat. 2544.

[E N D O F from Haynes v. U.S.A. Petition for a Writ of Certiorari, paper dated 24 May 1998 (case Sup. Ct. No. 97-8805) "RESPONSE to U.S.' WAIVER"]